

MAPPING  
PRO BONO  
IN AUSTRALIA





## MAPPING PRO BONO IN AUSTRALIA

National Pro Bono Resource Centre

May 2007

# MAPPING PRO BONO IN AUSTRALIA

NATIONAL PRO BONO RESOURCE CENTRE  
Law School Building, University of New South Wales NSW 2052  
[www.nationalprobono.org.au](http://www.nationalprobono.org.au)



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# 1 Introduction

*“Self-evidently, it is desirable that Australian law firms should include in their services a sizeable pro bono component. The advantages of doing so go far beyond salving the ‘social conscience’ of lawyers. It affords a variety of challenges to the highly talented young lawyers who need occasional rotation from a six trolley commercial dispute. It reminds them of the imperative demand for justice that may originally have sparked their interest in the profession of law. The righting of wrongs. The redress of discrimination. The protection of the underdog. Upholding the law against the strong and the powerful. Is this not why we were all, one day long ago, attracted to the law? We must make sure that we do not lose our direction and forget that original impulse.”*

The Hon Justice Michael Kirby, ‘Law Firms and Justice in Australia’ Address at Australian Law Awards, 7 March, Sydney, 2002

Australian lawyers have an admirable history of providing pro bono services to disadvantaged and marginalised people and to organisations that assist those people. However, despite the apparent interest in pro bono in recent times, pro bono is characterised by its ‘ad hoc’ nature and little has been conclusively documented, quantified or assessed.

The overall purpose of this Report is to provide information to all stakeholders in the ‘access to justice sector’ including government, the legal profession (private, publicly funded, not-for-profit and unfunded) on the scope of current pro bono activity. It is also intended to highlight areas of interest and concern and to stimulate further discussion about how pro bono can be resourced, directed and supported to provide better access to justice for disadvantaged Australians.

The Report describes pro bono legal service delivery in Australia and the environment within which pro bono legal services operate. Given the largely unstructured and segmented way in which pro bono activity is undertaken, it does not aim to provide a complete picture but rather provides a sketch of the pro bono landscape in Australia in late 2006. Some answers are provided to the following questions:

- how much pro bono legal service is provided in Australia and by whom?
- what kinds of pro bono legal services are provided?
- what are the general characteristics of pro bono legal services and the environment in which they operate?
- what are the some of the general characteristics of the pro bono landscape in Australia?

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- what are some of the innovations in pro bono legal service delivery and what seem to be effective strategies for using pro bono legal services to increase access to justice?
- what are the limitations inherent in pro bono as part of the legal landscape in Australia and what are the barriers to its effective delivery?
- what are some areas warranting further attention, and what are the likely and promising future directions for the development of pro bono in Australia?

Information on lawyers' participation in community service or other charitable work that may come under the auspices of some lawyers' or firms' commitment to the corporate social responsibility movement is not included. While there is, in some cases, an overlap between the community service and the pro bono legal work a lawyer may undertake for a client, this Report describes and comments only on the pro bono *legal* work, as the Centre's role is to encourage and support lawyers and support staff to undertake and participate in the delivery of high quality pro bono legal services.

### 1.1 Sources of information in this Report

This Report is based on research undertaken and information gathered by the Centre since its establishment in August 2002 and includes analysis of previous reports and studies about the pro bono landscape in Australia. Some information has been gathered in the course of the Centre's consultations and activities, and is anecdotal in nature. Sources are footnoted where specific references are available but some information is based solely on formal and informal consultations of Centre staff.

Quantifying and ascertaining the value of pro bono work is notoriously difficult. Much pro bono work is ad hoc and undocumented and, historically, many lawyers have not kept records of the type or amount of pro bono work they do. Difficulties in presenting a comprehensive picture are exacerbated by the absence, confusion or misconception about definitions of pro bono.

With the above disclaimer, the sources of information used to compile this Report include:

- Australian Bureau of Statistics' periodic surveys of the legal profession;
- Legal professional associations such as law societies, bar associations and the Law Council of Australia;
- Statistics from pro bono referral agencies, including professional associations, public interest referral schemes and court-based pro bono

1 .....  
The Australian Bureau of Statistics first added questions about pro bono to its survey of the legal profession in 1998–1999. It included further questions about pro bono work in its survey in 2001–2002, but does not propose to investigate the legal profession again until at least 2009–2010. The results of both surveys and other quantitative data are discussed in detail in Chapter 5 of this Report.

- referral schemes;
- Reports from, and consultations with:
  - > community legal centres and legal aid commissions
  - > law firms about their pro bono programs
  - > pro bono referral schemes and clearing houses;
- Research reports and academic articles on pro bono;
- Pilot survey of Queensland lawyers conducted in 2006 by the Queensland Law Society, Queensland University of Technology and the Centre; and
- Government agencies.

## 1.2 Definition of pro bono legal services

There is no universally accepted definition of what is meant by ‘pro bono’ although several definitions have been influential in developing pro bono practices<sup>2</sup>. Most definitions focus on legal assistance provided to disadvantaged or marginalised clients who could not otherwise access legal assistance, or to clients whose cases raise a wider issue of public interest. The term often includes legal services provided to organisations working for disadvantaged groups or for the public good. Many definitions include lawyers engaging in free community legal education and/or law reform. All definitions of pro bono include services that are provided without a fee being charged, and many include work done for a substantially reduced fee or reduced fee. There is general consensus that pro bono work should not be seen as a substitute for publicly funded legal services and that pro bono work complements these services. This is often reflected in definitions of pro bono work, sometimes as a criterion for acceptance of a pro bono referral.

As noted in the 2001 Report of the National Pro Bono Task Force to the Commonwealth Attorney-General<sup>3</sup> (‘the Task Force Report’) there are different approaches to defining pro bono legal practice which have included:

- consideration of the perspective of the lawyer (or firm) involved (and whether the work was done for no fee or substantially reduced fee, and work done ‘on spec’ or on a contingency fee basis); and
- work other than representation and non-litigious legal work such as involvement in alternative dispute resolution work, law reform initiatives, lobbying on access to justice issues and community legal education.

2 For a discussion of definitions and the strengths and limitations of various formulations, see C Arup, ‘Defining pro bono: models and considerations’, paper presented at the First National Pro Bono Conference, *For the public good*, Canberra, 4–5 August 2000, at: [152.91.15.15/ministers/attorney-general/probono/briefingpapersFri4Aug.doc](http://152.91.15.15/ministers/attorney-general/probono/briefingpapersFri4Aug.doc). Some of the definitions are also discussed in J Anderson (ed) *The Australian Pro Bono Manual: A Practice Guide and Resource Kit for Law Firms* (National Pro Bono Resource Centre and the Victoria Law Foundation, 2005) (hereafter ‘*Pro Bono Manual*’) 2<sup>nd</sup> edition, at 14-17, available online at [www.nationalprobono.org.au/probonomanual/ProBono\\_Manual\\_01\\_a.htm#](http://www.nationalprobono.org.au/probonomanual/ProBono_Manual_01_a.htm#)

3 Report of the National Pro Bono Task Force to the Commonwealth Attorney General, 14 June 2001.



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Over time, it appears that there has been some movement towards a more *client-centred* approach to defining pro bono work<sup>4</sup>. This approach emphasises that pro bono work is targeted to disadvantaged clients who would otherwise not have access to legal services, or to matters of broad public or community concern that are considered to be for the public benefit<sup>5</sup>. This is a welcome change of focus – noting that as recently as 1999, just over 60% of solicitors who responded to a Victorian pro bono survey considered that pro bono work included work for free or at a discounted rate for existing commercial clients, and nearly 50% thought it included free work for friends<sup>6</sup>.

Recently there has been an attempt to broaden the definition of pro bono to include work done by non-lawyers as well as financial or in-kind assistance, providing it will enhance access to justice for disadvantaged people or organisations and/or promote the public interest. Of possible concern for pro bono is the tendency to conflate pro bono with community service programs, sometimes implying that these very different forms of service delivery are interchangeable or identical. The issue for pro bono is that the current trend towards implementing corporate social responsibility programs may mean that firms are being drawn into diverting resources and pro bono budgets towards community service projects, often involving no legal skills, at the expense of valuable and in-demand legal services<sup>7</sup>.

There is also perhaps a concern that undertaking legally aided work, and no-win/no-fee arrangements are being included in definitions of pro bono<sup>8</sup>. While legal aid may indeed be reduced fee work, there are many in the profession who regard legal aid work as just that – and not pro bono. Similarly, it is difficult to include no-win/no-fee work as truly pro bono work, as this kind of work is commonly undertaken in the course of a firm's ordinary commercial practice. It can be seen as contrary to the widely acknowledged view that pro bono should be anchored in the professional obligation of all lawyers to provide pro bono legal services as part of their responsibility to contribute towards ensuring access to justice for disadvantaged people<sup>9</sup>.

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4 See *Task Force Report* at 5.

5 See, for example, the definition in the sample pro bono policies, Policy 1, by a private law firm in the *Pro Bono Manual*, at 126, [www.nationalprobono.org.au/probonomanual/ProBono\\_Manual\\_03.htm](http://www.nationalprobono.org.au/probonomanual/ProBono_Manual_03.htm)

6 See [www.victorialaw.org.au/pdfbook/PROBONO\\_SURVEY\\_1999\\_119KB.PDF](http://www.victorialaw.org.au/pdfbook/PROBONO_SURVEY_1999_119KB.PDF)

7 See Anne Cregan, 'As a law firm, how do you help?' originally published in *Living Ethics* (Autumn 2006, Issue 63), St James Ethics Centre, available at [www.nationalprobono.org.au/publications/other.html](http://www.nationalprobono.org.au/publications/other.html)

8 The most recent ABS survey included legal aid work as pro bono: see ABS 8667.0-Legal Practices, Australia 2001–02.

9 See also Margaret Camilleri, *Will the Real Pro Bono Please Stand Up?*, paper delivered to the National Association of Community Legal Centres Conference in Melbourne, 2–4 September 2002.

Suffice to say, there are a number of different definitions of pro bono, which may be required for different contexts and purposes. For example, a private law firm's definition of pro bono may be referable to that firm's particular criteria for selection, guidelines or target areas, while in other circumstances a more expansive definition may be considered appropriate<sup>10</sup>. The Centre's *Pro Bono Manual* sets out some of the definitions in detail.

As the aim here is to report broadly on the ambit of pro bono work in Australia, an inclusive approach has been taken. The Report does not adopt or promote a fixed or definitive description of pro bono, but rather accepts various definitions in the interests of presenting a broad range of pro bono legal activity. This approach acknowledges that while some of the pro bono activity may fall outside more restricted definitions, much of this work can play a considerable role in enhancing access to justice for disadvantaged people or organisations and/or in promoting the public interest.

This Report focuses primarily on the pro bono work done by the private legal profession. While most socially disadvantaged and marginalised members of society obtain legal advice and representation through community legal centres (CLCs), Indigenous Legal Organisations (ILOs) or via Legal Aid, these services are not the focus of this Report. However, to the extent that pro bono services constitute part of the greater access to justice sector, consideration of frontline service providers forms a necessary part of this research.

### 1.3 The evolving pro bono landscape in Australia

When the 1994 Access to Justice Advisory Committee, chaired by Justice Ronald Sackville, reported to the then Attorney-General, there was no explicit mention of the role of pro bono legal services in increasing access to justice<sup>11</sup>. Since that time, increasing attention has been given to the existing and potential pro bono contribution of the legal profession and its role in facilitating access to justice.

The evolving 'pro bono industry' is well-illustrated by the relatively recent establishment or development of:

- formal pro bono referral schemes coordinated by legal professional associations<sup>12</sup>

.....  
10 See, for example, the definition used by the Victorian Government Legal Services Contract scheme whereby firms successful in securing panel contracts for the provision of legal services to the Victorian Government commit to providing legal services on a pro bono basis to 'approved causes', or make payments in lieu. See the *Pro Bono Manual* at 16, or online at [www.nationalprobono.org.au/probonomanual/ProBono\\_Manual\\_01\\_a.htm#3](http://www.nationalprobono.org.au/probonomanual/ProBono_Manual_01_a.htm#3)

11 Access to Justice Advisory Committee, *Access to Justice: An Action Plan* (AGPS, Canberra 1994).

12 For example, the NSW and Victorian barrister and lawyer associations and institutes.

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- Public Interest Law Clearing House schemes<sup>13</sup>
- legal assistance schemes created by rules of court<sup>14</sup>
- structured pro bono programs in law firms
- informal pro bono rosters in courts and tribunals
- pro bono projects<sup>15</sup> and reports
- questions about or analysis of pro bono in surveys<sup>16</sup> and inquiries<sup>17</sup>
- pro bono awards<sup>18</sup>
- publications in the press about pro bono<sup>19</sup>
- the discussion of pro bono in conferences<sup>20</sup>
- the National Pro Bono Resource Centre<sup>21</sup>.

There are diverse perspectives on the benefits of an increase in pro bono, and support for the rise in pro bono activity is not universal. Ideally, pro bono schemes provide complementary assistance in cases which may not otherwise attract publicly funded legal assistance. Pro bono programs provide the opportunity for the profession to donate time and expertise, but this can present a dilemma. The rise in organised and government auspiced pro bono is considered by some as a 'slide back' to the charity model of dealing with legal assistance to disadvantaged people<sup>22</sup>, and as such may be antithetical to the modern day system of legal aid<sup>23</sup>.

The argument that the growth in organised pro bono is occurring concurrently with the decline in government commitment to legal aid, raises suspicions that pro bono

13 In NSW, Victoria, Queensland, Canberra, Western Australia. Further schemes are anticipated in other states.

14 Order 80 pro bono referral scheme, Federal Court of Australia; Order 12 pro bono referral scheme, Federal Magistrates Court; Rule 66A legal assistance referral scheme, Supreme Court of NSW; Rule 28C legal assistance referral scheme, District Court of NSW.

15 For example, the Victoria Law Foundation supports a Pro Bono Secretariat; and Young Lawyers, a committee of the NSW Law Society, is producing a report which outlines the pro bono output of law firms for law school graduates.

16 For example, the inclusion of questions about pro bono in the Australian Bureau of Statistics survey of the legal profession in 1998.

17 For example, the specific inclusion of the impact on pro bono services of the capacity of the legal aid and access to justice arrangements to meet community need for legal assistance in the 2004 Legal and Constitutional References Committee in Legal aid and Access to Justice, *see* [www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/)

18 For example, the awards sponsored by the Victoria Law Foundation ([see www.victorialaw.org.au/Probono.asp](http://www.victorialaw.org.au/Probono.asp)) and the Law and Justice Foundation of New South Wales Justice Awards at [www.lawfoundation.net.au/justice\\_awards/](http://www.lawfoundation.net.au/justice_awards/)

19 The Centre has noted a marked increase over time in articles about pro bono in legal journals and the mainstream press, including regular columns dedicated to pro bono news and events in some legal journals, for example, *The Law Institute Journal* in Victoria.

20 Sessions exploring pro bono are now routinely included in 'access to justice' conferences, symposia and workshops.

21 The National Pro Bono Task Force recommended the establishment of a National Pro Bono Resource Centre in 2001. The Centre commenced operations in late 2002.

22 See S Biondo and C Field, 'Legal Aid in the 1990s – the slide back to charity', (1996) 8 *Just Policy* 39, Victoria Council of Social Services.

23 See Fitzroy Legal Service, *Submission – Inquiry into Legal Aid and Access to Justice* (September 2003) at [www.aph.gov.au/Senate/committee/legcon\\_ctte/legalaidjustice/submissions/sublist.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/legalaidjustice/submissions/sublist.htm) at 33.

is either manifestly or latently being used as a substitute for legal aid<sup>24</sup>. This is an issue for CLCs who are concerned whether they will continue to attract volunteers who may be under pressure to undertake in-house pro bono, and whether the nature of in-house pro bono constitutes the same dedication to social justice and social change as working with CLCs<sup>25</sup>.

From a policy perspective, the growth in pro bono referral schemes, in particular court referral schemes, may not be the best use of valuable pro bono resources. The establishment and implementation of some court schemes (but not all) appear to have been fairly ad hoc: multiple court schemes may inadvertently provide overlapping support which may indicate a lack of a coordinated or national approach or inadequate consideration of resource/policy implications. There is also little by way of evaluation of the pro bono schemes<sup>26</sup>. As noted in the *Task Force Report*, strategies to enhance or increase pro bono should be aimed at articulating with, rather than derogating from or supplanting, the critical frontline services provided by publicly funded legal services<sup>27</sup>.

#### 1.4 Increased visibility of pro bono in the access to justice landscape

The role of pro bono in the access to justice landscape is becoming increasingly visible and it is now clear that pro bono legal services are playing an important role in expanding access to justice.

In 1998 and 1999 pro bono practice was considered in studies undertaken by the Law Foundation of New South Wales, the Pro Bono Secretariat of *Voluntas* (a 1999 project of the Victoria Law Foundation<sup>28</sup>) and by the Australian Law Reform Commission (the ALRC) in its *Managing Justice* Inquiry in 2000. In *Managing Justice*<sup>29</sup>, the ALRC referred to the many pro bono legal service schemes operating throughout Australia and to the fact that many individual lawyers provided pro bono services outside these schemes.

Between 2003 and 2004, the Commonwealth Senate Legal and Constitutional Affairs Committee undertook an inquiry into the capacity of current legal aid and access to

24 *ibid.*

25 See above, notes 7 and 8, for a discussion of the implications of organised pro bono for CLCs.

26 See Australian Institute of Judicial Administration (AIJA) and the Federal Court of Australia, *Forum on Self-Represented Litigants – Report* 2005, AIJA at 19.

27 See *Task Force Report* at 15.

28 See [www.victorialaw.org.au/download\\_Pdf.asp?pdf=Vic\\_Law\\_Barristers\\_Survey\\_109kb.pdf](http://www.victorialaw.org.au/download_Pdf.asp?pdf=Vic_Law_Barristers_Survey_109kb.pdf). Approximately 1380 questionnaires were sent out and 227 were returned, a response rate of rate of 16.4%. The survey used the Law Council of Australia definition of pro bono.

29 ALRC 89, 2000.

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justice arrangements to meet the community need for legal assistance<sup>30</sup>. The terms of reference included consideration of '[t]he impact of current arrangements on the wider community, including community legal services, pro bono legal services and levels of self-representation'<sup>31</sup>.

The Final Report of the Senate Legal and Constitutional Committee Inquiry into Legal Aid and Access to Justice<sup>32</sup> (the *2004 Senate Report*) devoted an entire chapter to pro bono services, which covered:

- developments in pro bono legal service provision;
- the lack of data on pro bono legal services;
- the question of whether pro bono legal services are a substitute for legal aid funding;
- the effect of a mismatch of legal skills and community need;
- the impact of lawyers' conflicts of interests on the provision of pro bono legal services;
- limitations of lawyers' resources; and
- reducing the costs of litigation.

The *2004 Senate Report* noted that there have been significant developments in pro bono service provision, particularly in terms of their increased coordination. Major initiatives include two national conferences on pro bono legal services and the establishment in 2002 of the National Pro Bono Resource Centre. However, it noted that data on the nature and extent of pro bono services nationally was still sparse<sup>33</sup>.

The *2004 Senate Report* commended the increased provision of pro bono legal services but noted:

*"the Government cannot rely on pro bono services as an answer to the current level of legal aid or as a panacea to overcome the current gaps in legal aid's provision of access to justice"*<sup>34</sup>.

The *2004 Senate Report* referred specifically to the substantial pro bono contribution of the legal profession. This is significant, coming just 10 years after the 1994 Access to Justice Task Force Report in which there was no explicit reference to the role of pro bono legal services in increasing access to justice.

.....  
30 [www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/contents.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/contents.htm)

31 [www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/tor.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/tor.htm)

32 [www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/ch09.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/ch09.htm)

33 Senate Inquiry into Legal Aid and Access to Justice, Final Report, [www.aph.gov.au/Senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/contents.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/contents.htm) at xix.

34 [www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/ch09.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/ch09.htm) at 179.

## 1.5 Sector development

Individual practitioners and smaller firms have traditionally undertaken pro bono work as part of their daily practice or as volunteers at community legal centres.

The First National Pro Bono Conference (‘For the Public Good’) was held in Canberra in August 2000 and in October of that year the Attorney-General of Australia announced the establishment of a National Pro Bono Task Force (‘the Task Force’), with secretariat support provided by the Australian Law Reform Commission. Its role was to create a blueprint of how best to implement the suggested outcomes from the Conference. In 2001, the Task Force reported to the Attorney-General with a Report and Recommended Action Plan for the Commonwealth to facilitate national coordination and development of pro bono legal services in Australia<sup>35</sup>.

The *Task Force Report* based its recommendations and Action Plan on some key principles to underpin the organisation and provision of pro bono legal services, including:

- pro bono practice is not a substitute for legal aid;
- the design and provision of pro bono services should be driven by client needs;
- pro bono clients should expect, and receive, the same high quality of service as other clients;
- pro bono practice is a voluntary activity; and
- there is an important role for government in encouraging and supporting pro bono initiatives<sup>36</sup>.

The *Task Force Report* stated that much of the pro bono work in Australia had to date taken place ‘in an unstructured – even disorganised – manner’<sup>37</sup>. A 1999 survey in Victoria found that only 25% of respondent legal practitioners reported having a firm pro bono policy and of those only 11% had a written policy<sup>38</sup>. It also noted that firms with five or more partners were nearly twice as likely to have a pro bono policy.

Since the early 1990s, a number of larger firms have established structured in-house pro bono schemes and/or supported external legal services, often in partnership with community based organisations. Gilbert+Tobin appointed the first pro bono

.....  
35 Report of the National Pro Bono Task Force to the Commonwealth Attorney-General (2001).

36 *ibid* at 11-13.

37 *ibid* at 9.

38 Voluntas Survey at 7. The Centre’s recent pilot survey of Queensland found that 17% of those respondents who had done pro bono during the previous year had a written pro bono policy, while 20% did not know whether their firm had a written policy or not.

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coordinator in 1996 and there are now 27 firms with specifically nominated pro bono contacts or coordinators. At least eight of these are full time positions<sup>39</sup> and most national firms have a pro bono coordinator/contact person in each State or Territory office.

One of the Task Force's key recommendations on the Action Plan was the establishment of the National Pro Bono Resource Centre (the Centre) which was subsequently set up in 2002 with four years' funding support from the Commonwealth Attorney-General's Department ('the AGD'). In 2005 it received a further four years' funding from the AGD, as well as additional funding from Attorneys-General of all States and Territories, for a further four years. The Centre receives significant administrative support from the Faculty of Law at the University of NSW, and has recently moved with the Faculty's other affiliated Law Centres into the newly built Law Building<sup>40</sup>.

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39 For current list see [www.nationalprobono.org.au/probonomanual/ProBono\\_Manual\\_04.htm#9](http://www.nationalprobono.org.au/probonomanual/ProBono_Manual_04.htm#9)

40 [www.law.unsw.edu.au/centres/index.asp](http://www.law.unsw.edu.au/centres/index.asp)

## 2 Who are the pro bono providers?

### 2.1 Introduction

One of the *Task Force Report* recommendations adopted by the Centre is to foster a strong pro bono culture in Australia<sup>41</sup>. Its success is largely contingent on realising the profession's ethical responsibility to embrace and act more fully on its 'service ideal'.

In the context of the business imperative which largely underscores the profession's operations, a key challenge is to encourage, harness and foster a strong pro bono culture at all levels of the profession. This includes promoting the pro bono ethic and finding ways to support pro bono at law schools, within professional associations, to solicitors, barristers, government lawyers, corporate lawyers and the judiciary.

This section discusses what is known about pro bono providers in different sectors of the profession in Australia.

### 2.2 The legal profession

According to the most recent Australian Bureau of Statistics Survey of Legal Practices released in 2003<sup>42</sup>, there were 36,124 solicitors and barristers working in Australia at the end of June 2002. This number comprised 7,566 solicitor practices, 3,670 barrister practices, 41 patent attorney businesses, 18 government solicitor/public prosecutor organisations, 8 legal aid authorities and 191 community legal centres. The profession supported an additional 57,628 staff (including paralegals, articulated clerks and other support staff). Solicitor practices accounted for 84.5% and barrister practices accounted for 6.3% of employment in the profession. In the survey period (2001-2002) the private solicitor practices generated \$8,378.6m and barrister practices generated \$1,146m in income.

There is no recent or comprehensive national analysis of the breakdown of the profession by employment sector. The Law Council of Australia estimates the profession to be made up of 50,000 legal practitioners in August 2006<sup>43</sup>. A recent analysis of the employment sector of solicitors in New South Wales indicates that the

41 *Task Force Report* at 29–33.

42 ABS 8667.0—Legal Practices, Australia. 2001–02.

43 Based on the Law Council of Australia's (LCA) estimate of the combined total of barristers, solicitors, government lawyers, corporate lawyers and other legal practitioners – communications with the LCA, August 2006.



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private practice solicitors make up around 69%, in-house (corporate) solicitors 14.6% and government lawyers around 10.8% of the solicitor population<sup>44</sup>. A projection to 2015 estimates these figures will be 68.4% in the private profession, 19.9% in the corporate sector and 10.4% will be working as government solicitors<sup>45</sup>.

### 2.3 Legal professional associations

Some professional associations have been collecting data on levels, and sometimes types, of pro bono output for a number of years. Based on data from its 1997–98 practising certificate survey, the Law Society of New South Wales estimated the amount of pro bono work undertaken by its members at around 63,000 hours, for a value of about 74 million dollars<sup>46</sup>. The 2003-04 survey indicated that 71% of lawyers from country firms, 56% from suburban firms and 47% from city firms had undertaken pro bono work in the previous year<sup>47</sup>.

When the New South Wales Bar Association surveyed the pro bono output of its members in 1999, it valued the pro bono work referred to its members in 1998–99, in federal matters alone, at around \$85,000. For the year ending 2005, the New South Wales Bar Association reported 2,675 pro bono work hours in relation to their Legal Assistance Referral Scheme (LARS), bringing the total number of pro bono hours to 25,000 since the scheme's inception in 1996<sup>48</sup>. If the pro bono work undertaken by barristers outside the LARS framework were counted, this figure would increase substantially.

Barristers across Australia participate in duty barrister schemes and court appointed schemes. Individual barristers are known to undertake work outside of these schemes, but there are no formalised data to indicate either the type or the amount of pro bono work that they do. According to the Voluntas survey in Victoria in 1999, 94% of the barristers surveyed kept no records of their pro bono work<sup>49</sup>.

The ALRC's empirical research on Family Court matters showed that many privately funded clients received some pro bono assistance from their lawyers. In addition, in cases funded by legal aid, a large proportion of the time spent on the case was uncharged<sup>50</sup>.

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44 See Law Society of NSW, 2005 Profile of Solicitors in NSW at 16, available at [www.lawsociety.com.au/page.asp?partID=934](http://www.lawsociety.com.au/page.asp?partID=934)

45 *ibid* at pp 10-11 available at [www.lawsociety.com.au/page.asp?partID=934](http://www.lawsociety.com.au/page.asp?partID=934)

46 See *Task Force Report*, at 8.

47 Law Society of NSW Practising Certificate Survey 2003-04 (October 2004)

48 NSW Bar Association *Annual Report* 2004-2005, [www.nswbar.asn.au/database/bar\\_brief/documents/AR05\\_web.pdf](http://www.nswbar.asn.au/database/bar_brief/documents/AR05_web.pdf)

49 Pro Bono Survey Report (1999), see [www.victorialaw.org.au/Probono\\_-\\_Barrister\\_Survey\\_Report.htm#exs](http://www.victorialaw.org.au/Probono_-_Barrister_Survey_Report.htm#exs)

50 See *Task Force Report*, at 8.

## 2.4 Lawyers and law firms

### **Data**

According to the June 2003 ABS survey, there were 29,159 solicitors employed by 7,566 law firms across Australia. The data grouped practices in terms of size of the partnership. There were then 91 firms with 10 partners or more. These large firms had an average of 115 solicitors each and 166 non-legal staff for an average total staff of 281. Small practices (fewer than 20 lawyers) accounted for 92% of all practices but only 44% of employment and 32% of the operating profit in the sector. Males accounted for 66% of solicitors in private practice. While there is no national data available, in NSW women currently account for 66% of those working at the NSW Legal Aid Commission, and 80% of those working in community legal centres in NSW<sup>51</sup>.

The ABS reported that 63% of firms reported doing some pro bono work. However, as noted above, the definition of pro bono was broad and included work, such as legal aid work, which many in the access to justice sector would not consider pro bono.

The NSW Law Society 2003–04 practising certificate survey revealed that 51% of respondents undertook no pro bono work in an average month; 30% said they undertook between one and four hours per month; 11% said five to ten hours and 5% said more than ten hours<sup>52</sup>. The 2004–05 Survey shows that 48% undertook no pro bono work, 29% spent between one and four hours a month, 12% between five and ten hours and 5% more than ten hours<sup>53</sup>.

According to NSW data, lawyers working in private firms in country NSW were much more likely to report undertaking some pro bono work (71% country, 56% suburban, 47% city). Those working in government or corporate legal positions (18%) were much less likely than those in private firms (54%) and those in incorporated legal practice (47%) to report undertaking pro bono work. Within private firms, partners were more likely (70%) than employees (43%) to report spending at least some time on pro bono work. Among sole practitioners 63% reported some time on pro bono each month<sup>54</sup>.

As noted above, the spread of pro bono activity amongst law firms is uneven. While the ABS statistics indicate that more pro bono work is done by smaller firms, often in a regional setting, the Centre's research shows that larger city firms with

51 See, for example, Legal Aid Commission of NSW, *Annual Report 2005-2006*, at 77; consultations with Community Legal Centres.

52 2003/04 Law Society Practising Certificate Survey.

53 2004/05 Law Society Practising Certificate Survey.

54 2003/04 Law Society Practising Certificate Survey.

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structured pro bono programs undertake large quantities of pro bono in varying forms. For example, in the financial year ending June 2005, Blake Dawson Waldron (BDW) undertook over 23,000 hours pro bono work, acted in-house for over 450 people and organisations and assisted at least 1500 people through its external program of pro bono secondments<sup>55</sup>. BDW's pro bono program is voluntary – but it reports that almost 70% of the firm's lawyers worked on a pro bono matter through the year. Another firm, Clayton Utz, expects every lawyer at the firm to be involved in pro bono work. Clayton Utz undertook over 26,000 hours of pro bono work during the same period<sup>56</sup>.

The ABS has indicated that it does not intend to undertake another survey of legal practices until 2009. In the absence of any external or reliable source of data, the Centre plans through 2006 and 2007 to undertake a comprehensive survey of the legal profession and pro bono service delivery.

### **Structured law firm pro bono programs**

In recent years, many of the larger law firms have increased their commitment to pro bono and have expanded and formally structured their pro bono programs. Some of the larger, national firms in Australia have active in-house as well as external pro bono secondment programs.

Some of these firms have full-time or part-time pro bono coordinators, and may additionally employ, or have on rotated placements, lawyers who undertake pro bono work on a full-time basis on behalf of the firm. Pro bono coordinators function as a contact point for external agencies referring work. Their roles typically involve some casework, as well as administrative tasks such as screening pro bono cases and allocating, coordinating and supervising pro bono work throughout the firm. There are now at least 27 firms with specifically nominated pro bono contacts or coordinators. At least eight of these are full time positions<sup>57</sup> and most national firms have a contact person in each State or Territory office. They also publicise opportunities for the firm's lawyers and other staff to be formally involved in a range of pro bono activities which may include advice and representation of clients and community organisations, including test case and public interest litigation, providing or participating in community legal education and providing or participating in workshops and training sessions.

The presence and support of a 'specialist' pro bono lawyer may make it easier for other lawyers to do pro bono work as the pro bono specialist can seek out matters that fit with the existing interests of the firm's lawyers. They can also train

55 Blake Dawson Waldron, *Pro Bono Annual Report 2004-05*, at 2.

56 Clayton Utz, *Community Connect 2005*, at p 2.

57 For current list see [www.nationalprobono.org.au/probonomanual/ProBono\\_Manual\\_04.htm#9](http://www.nationalprobono.org.au/probonomanual/ProBono_Manual_04.htm#9)

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others in the firm and develop resources relevant to pro bono practice. Ideally, the employment of a specialist pro bono lawyer is accompanied by a policy making it clear that the responsibility for pro bono is shared and fostered broadly within the firm.

The transition from ad hoc to structured pro bono practices in larger firms provides benefits to both the firms and recipients of pro bono assistance. For example, firms with a structured pro bono program are better able to manage the level of their pro bono commitment, to track and record output, to provide pro bono opportunities for all lawyers within the firm and to better target those in need of pro bono assistance.

One of BDW's pro bono program target groups, for example, is people with intellectual disability or mental illness and their carers. Estate planning and wills for this group were identified as an area of broad concern and BDW organised training with speakers from specialist CLCs, practitioners and academics with expertise in these areas of law. As a result of focusing efforts in this targeted area, BDW's wills project is one of its biggest in-house practice areas, which includes drafting wills for carers, creating template wills for people with intellectual disability who have the legal capacity to make a will, acting for people with intellectual disability or mental illness on estate matters and providing community education on estate matters for parents and carers. BDW is also involved in a law reform project on trusts established under wills for people with an intellectual disability or mental illness<sup>58</sup>.

### ***Smaller law firms and pro bono***

By contrast, and based on recent research into small firm pro bono in Western Sydney and interim survey results from the Centre's survey in Queensland, it appears that the organisation of pro bono work of smaller firms is, probably by preference, unstructured and flexible<sup>59</sup>.

The Western Sydney research concluded that one reason smaller suburban law firms prefer to retain an unstructured approach to pro bono is that small law firms, like other small businesses, are sensitive to shifts in the business cycle and their capacity to take on pro bono matters depends on the overall health of the cycle. This report also noted that recent regulatory changes – and the consequential loss of income from personal injury work – mean that these smaller firms wish to retain a flexible approach to deciding whether or not to accept pro bono work. The tendency to prefer autonomy and to resist structured pro bono work seems to include a resistance to participate in external pro bono schemes. However, the researchers

58 See Blake Dawson Waldron, *Pro Bono Annual Report 2005* at 18.

59 See Gillian McAllister and Tom Altobelli, *Pro bono legal services in Western Sydney* (November 2005) University of Western Sydney and the Law and Justice Foundation of NSW at 31–32. Available at [www.nationalprobono.org.au](http://www.nationalprobono.org.au)

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concluded that given the notable sense of attachment to, and involvement in their local communities, local pro bono networks may be a way to extend the pro bono work of suburban firms<sup>60</sup>.

The sentiment that tort law reforms have had a direct impact on the capacity of small and rural law firms to undertake pro bono work has been recently restated by the Law Society of NSW in a Policy Statement on tort law reform<sup>61</sup>. The Law Society notes that solicitors still practising in personal injury compensation are struggling under financial pressure to keep their practices afloat, and are simply unable to take on pro bono cases for those groups or individuals who are without the financial means to pay legal fees and unable to access legal aid.

### 2.4 Barristers

#### **Data**

According to ABS data, there were 3,670 barrister practices in Australia at the time of the 2002 survey period, of which 384 were senior counsel practices. About 85% of barristers were male. Around 44% of Australia's barrister practices were located in NSW, and these generated 58% of the total practice income of barristers.

The ABS survey indicated that 78% of barristers reported doing some sort of pro bono work in the survey period. However, as noted earlier, the definition of pro bono used by the ABS survey was broad and included legally aided services.

Barristers are generally organised into State and Territory associations and within groups of chambers. Bar associations in NSW and Victoria have formal legal assistance referral schemes that coordinate some of the pro bono legal work done by barristers in those States. Elsewhere arrangements are less formal but nevertheless barristers provide pro bono legal services in all jurisdictions. The majority of pro bono referrals from the court-based schemes are to barristers, often in cooperation with the barristers' professional associations. Whilst there is data about the matters referred through the legal assistance referral schemes, data about the nature and amount of the informally referred work is very limited.

The Duty Barrister Scheme in NSW is an initiative of the NSW Bar Association and has been running in Sydney since 1995. Under the scheme, volunteer 'duty' barristers are available every day at the Downing Centre court (Local and District) to provide advice or represent people in court for no cost<sup>62</sup>. This scheme formalised a considerable amount of the pro bono duty work undertaken by members of the

60 *ibid* at 23, 33.

61 See 'Personal and Public Responsibilities in Injury Compensation', in *Law Society Journal* (2006) Vol 44(3) 57 at 61.

62 Any work done subsequently may be done for a fee.

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bar, and it is likely that a further and substantial amount of duty work is undertaken outside this scheme.

The NSW Bar Association Legal Assistance Referral Scheme (LARS) has been formally operating since 1994 and NSW barristers undertake pro bono services under LARS and under legal assistance schemes in association with the Supreme Court, the Federal Court, the District Court, the Federal Magistrates Court, the Australian Industrial Relations Commission of NSW and at the Local/District Court at the Downing Centre. Other NSW Courts and Tribunals (the Land and Environment Court and the Administrative Decisions Tribunal) make referrals to LARS on an informal basis<sup>63</sup>. Further information about LARS is set out below under 'referral schemes' [Section 4.2]. The Bar Association estimated that the pro bono work done under the LARS and affiliated duty roster schemes amounted to over 25,000 hours since 1994<sup>64</sup>, however total pro bono work undertaken by barristers in NSW is likely to be much higher.

The NSW Bar Association has also run a scheme with the Aboriginal Legal Service (NSW/ACT) Limited (ALS)<sup>65</sup>. The scheme consists of approximately 35 barristers who provide services on a pro bono basis in a range of criminal matters. These include, for example, appeals to the Court of Criminal Appeal, Parole Board hearings, Coroner's Court and Children's Court matters. Those who volunteer are placed on a register and contacted by ALS when the demand arises, usually no more than once or twice a year.

In 1999, Voluntas, the Victorian Pro Bono Secretariat, undertook a survey of the practising barristers at the Victorian Bar<sup>66</sup>. The survey indicated that 90% of responding barristers had engaged in pro bono work over the previous two years and that on average, the monthly median value of pro bono work was \$1,500. Barristers admitted before 1971 were less likely to do pro bono work. Of the barristers surveyed, 95% operated under an unwritten policy in respect of pro bono work and 94% did not keep a record of their pro bono work. The three areas of law in which the highest amount of pro bono work was reported included administrative law/privacy, commercial/tax/leases and criminal law.

Factors most likely to influence a barrister to undertake pro bono work were the inability of a client to pay for legal services (92%) and public interest relevance (64%).

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63 See [www.nswbar.asn.au](http://www.nswbar.asn.au)

64 NSW Bar Association Annual Report 2005 at 41.

65 Previously the Sydney Regional Aboriginal Corporation Legal Services. See, [www.nswbar.asn.au/Public/LegalAssistance/sracls.htm](http://www.nswbar.asn.au/Public/LegalAssistance/sracls.htm)

66 See [www.victorialaw.org.au/download\\_Pdf.asp?pdf=Vic\\_Law\\_Barristers\\_Survey\\_109kb.pdf](http://www.victorialaw.org.au/download_Pdf.asp?pdf=Vic_Law_Barristers_Survey_109kb.pdf). Approximately 1380 questionnaires were sent out and 227 were returned, a response rate of rate of 16.4%. The survey used the Law Council of Australia definition of pro bono.

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Work was reportedly sourced primarily from individual and community organisations and then through referral organisations: PILCH (Vic), the Law Institute of Victoria Legal Assistance Scheme and the Victorian Bar Legal Assistance Scheme.

Differences emerged between male (78% of the sample) and female barristers (21% of the sample.)<sup>67</sup> More male barristers reported engaging in more reduced fee work and more no win-no fee type work than their female counterparts but more female barristers (59%) reported undertaking all no-fee pro bono work than male barristers (43%). Female barristers also did a higher percentage of free community education or law reform work or giving free legal advice and/or representation to charitable and community organisations.

The Victorian Bar Legal Assistance Scheme (VBLAS) has noted that over 400 barristers (more than 25% of the state's practising barristers' list) have volunteered to participate in VBLAS.<sup>68</sup> Many others, although not formally registered, welcome requests to assist. VBLAS also notes that at this stage only 31% of counsel report on the time spent and on outcomes for referred matters. The majority of applications came from individuals and referrals were for advice, drawing up documents and/or appearance work.

The Refugee Advocacy Service of South Australia (RASSA) is a non-profit organisation that provides free legal advice to asylum seekers held in the Baxter Immigration Detention Facility, north of Adelaide. In what has been a remarkable response from the South Australian Bar, more than 50% of South Australian barristers have been involved in assisting asylum seekers on a pro bono basis.

Data from the Federal Court of Australia indicate a very high number of pro bono referrals from the Court sitting in Western Australia to barristers in immigration matters in particular periods, presumably from asylum seekers when detained in Port Hedland.

The Centre has little information about the amount or type of pro bono work done by barristers in other States or Territories.

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<sup>67</sup> Gender was not provided in all of the sample.

<sup>68</sup> The Victorian Bar Legal Assistance Scheme (VBLAS) *Annual Report 2004/05*.



### 2.5 Law students

Law schools can play an important role in shaping and defining the ethics and aspirations of individual lawyers<sup>69</sup>. Research in the USA has indicated that students who undertake pro bono, including mandatory pro bono work, display a significantly heightened interest in making pro bono part of their professional practice after graduation<sup>70</sup>.

The *Task Force Report* recommended active promotion of a strong pro bono culture in Australia and that law students have opportunities to participate in internships/ outreach programs with a pro bono focus<sup>71</sup>. The Australian Law Reform Commission in its report 'Managing Justice' referred to the culture engendered by involvement in pro bono and said:

*'Such culture could and should be encouraged in undergraduate education by introducing pro bono requirements for subjects or courses at law schools, thus building a strong foundation of ethics and responsibility from which to engender commitment to future pro bono contributions from aspiring lawyers. Some Australian universities have already introduced such course requirements. Legal professional associations could assist in this process by providing opportunities for students to engage in pro bono work under supervision or by providing financial assistance for such endeavour.'*<sup>72</sup>

This Report is not the vehicle to debate whether clinical legal work undertaken for credit as part of a degree is, or is not, pro bono. This is discussed in the Centre's *Information Paper: Pro bono and clinical legal education programs in Australian law schools*<sup>73</sup>. Nor does this mapping report discuss the issue of whether or not a pro bono element should be *compulsory* for all law students, a debate still to be had in Australia, but very lively in the USA<sup>74</sup>.

The Centre is, however, currently liaising with the Council of Australian Law Deans (CALD) to explore ways in which Australian Law Schools can better foster the intrinsic values of legal professionalism at law schools as a way of explicitly encouraging the inclusion of pro bono within the law school curriculum.

Australia's 29 law schools have taken a range of initiatives in this direction. The research informing the Centre's law school Information Paper revealed a significant amount of diversity and innovation in organised pro bono activity. In August 2004, in 16 of the 29 law schools (55%), pro bono or other volunteering activities for

69 See, Esther F. Lardent, 'Introduction: Symposium on Innovations in Pro Bono Practice' in *Pro Bono In Motion* (2004) Vol 1, Issue 9.

70 *ibid.*

71 See *Task Force Report* at 30-31.

72 *Managing Justice*, ALRC 89, 2000.

73 National Pro Bono Resource Centre, *Information Paper: Pro bono and clinical legal education programs in Australian law schools*, August 2004, available at [www.nationalprobono.org.au/publications/index.html](http://www.nationalprobono.org.au/publications/index.html)

74 See, for example, the Association of American Law Schools Commission (AALS) on Pro Bono And Public Service Opportunities, Learning to Serve: [www.aals.org/probono/report.html](http://www.aals.org/probono/report.html)



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students were organised or facilitated either through the law school faculty or a law student society/association. Clinical legal education programs were available at 23 of the 29 law schools (79%) with most being run in conjunction or partnership with local community legal centres (CLCs). There were also programs in association with Legal Aid Commissions (LACs), the courts, another university, and in one instance, directly with a law firm. A number of other innovative initiatives aimed at or created by law students and schools are set out below.

The Information Paper showed that in three law schools (University of New South Wales, University of Notre Dame and the University of Wollongong) participation in a subject containing a clinical component (of varying time commitment) was compulsory for undergraduates. At least two universities (University of Newcastle and University of Technology, Sydney) provided pro bono opportunities for students at the centres where they undertook elective clinical legal education courses. There were clinical and pro bono externship programs with CLCs, community and public interest organisations (eg, Amnesty International, Australian Red Cross), Aboriginal organisations and legal services, law firms, courts, tribunals, the DPP, Legal Services Commissions and Law Reform Commissions.

There are also programs involving law students in creating useful resources to assist others doing social justice work. These include [www.lawvolunteers.org.au](http://www.lawvolunteers.org.au), a resource established by Monash and La Trobe University law student societies; volunteer networks for law students at University of Sydney and Queensland University of Technology; a Native Title Representative Body Professional Project at Monash University which aims to provide training and support programs for lawyers involved in native title matters. Monash University also participates, in conjunction with the Monash-Oakleigh Legal Service, in the Family Law Assistance Program (FLAP), a self-help clinical legal service designed to help people involved in Family Court litigation<sup>75</sup>.

In 2005, the Centre and the National Association of Community Legal Centres (NACLCL) initiated a joint project to assist students and other volunteers to find out about volunteering opportunities in CLCs, Aboriginal legal services and Family Violence Protection Legal Services across Australia<sup>76</sup>. Potential volunteers can go to [www.clcvolunteers.net.au](http://www.clcvolunteers.net.au) to find out which of the listed organisations are looking for volunteers at any point in time – and what skills are needed. A comprehensive ‘what to expect as a volunteer’ section on the website provides general information about volunteering at CLCs. The site builds on the [www.lawvolunteers.org.au](http://www.lawvolunteers.org.au) site

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75 See [www.law.monash.edu.au/legal/flap.html](http://www.law.monash.edu.au/legal/flap.html)

76 Family Violence Prevention Legal Services (FVPLS) are funded by the Commonwealth Attorney-General's Department to assist Indigenous adults and children who are victims of family violence, including sexual abuse, or who are at immediate risk of such violence.

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referred to above.

The Victoria Law Foundation initiated a scheme in 2003, aimed at improving the public policy consciousness of law students. Their Legal Policy Internship Program provides about 25 students with the opportunity to undertake summer or winter internships with a range of non-profit and public benefit organisations, including Victoria Legal Aid, Victorian Council of Social Services and the Victorian Law Reform Commission. The Program has been an effective way of assisting agencies to meet their short term legal research needs while at the same time exposing the next generation of lawyers to public benefit thinking and practice<sup>77</sup>.

All three PILCHs (in Victoria, New South Wales and Queensland) have created and negotiated an innovative range of programs with law schools and students<sup>78</sup>. A number of law schools have introduced social justice programs for students to experience the practice of law ‘in the public interest’ by coursework and short-term placements within public interest organisations and in law firms with pro bono programs.

The ‘Chief Justice’s Victoria Law Foundation Medal for Excellence and Community Service’ is another initiative to encourage the development of a pro bono ethos among law students. The Medal is awarded to a final year law student who has demonstrated a commitment to community service as well as excellent scholarship. The Medal is an attempt to acknowledge, and thereby encourage, a strong commitment to pro bono work at the earliest stages of a professional career<sup>79</sup>.

There are numerous networks, of varying formality, of students involved in social justice projects that include pro bono casework. These have included the Global Alliance for Justice Education (GAJE) and Refugee Advocacy Network (RAV’N), which has provided legal advice and assistance to refugees and asylum seekers. Another network, the Progressive Law Students Network, was established in 2001 at the University of Technology, Sydney, as a forum for law students interested in human rights, community law and progressive social change.

In 2004, the Centre, in conjunction with the Federal Magistrate’s Court (the FMC), coordinated a forum attended by Federal Court Magistrates, law school academics, law student body representatives, CLC and legal aid workers and private firm lawyers to explore the possibilities of the constituents’ various organisations working together to assist the Court and increase access to justice for unrepresented litigants in migration matters. This initiative has led to an ‘action plan’ for students to assist

77 See [www.victorialaw.org.au/internship.asp](http://www.victorialaw.org.au/internship.asp)

78 See PILCH (Vic) at [www.pilch.org.au/](http://www.pilch.org.au/), PILCH (NSW) at [piac.asn.au/legal/pilchhelp.html](http://piac.asn.au/legal/pilchhelp.html), and QPILCH at [www.qpilch.org.au](http://www.qpilch.org.au)

79 Further information at [www.victorialaw.org.au/chief\\_justices\\_medal\\_for\\_excellence\\_and\\_community\\_service.asp](http://www.victorialaw.org.au/chief_justices_medal_for_excellence_and_community_service.asp)

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the court and refugee applicants on a pro bono basis through:

- The FMC liaising with the Law Faculty of the University of Western Sydney to explore an initiative whereby students will draft documents in areas outlined by the FMC and university. Documents will be reviewed and approved by the FMC.
- The FMC liaising with the University of Sydney with a view to placing students with the FMC for a semester.
- The FMC liaising with Refugee Advocacy Volunteer Network (RAV'N) and the Public Interest Advocacy Centre to pursue the idea of placing students with lawyers who have received pro bono referrals under Part 12 of the FMC Rules.

### ***Pro Bono Students Australia pilot project (PBSA)***

In conjunction with the University of Western Sydney (UWS) Law School, the Centre initiated a trial pro bono placement project at UWS based on the Pro Bono Students Canada program (PBSC) founded at the University of Toronto<sup>80</sup>. PBSC is an alliance of Canadian law schools which matches volunteer law students with public interest organisations, government agencies, and lawyers doing pro bono work. The UWS pilot, Pro Bono Students Australia (PBSA) commenced in May 2004 and the project has matched law students with Western Sydney public interest and community organisations in need of law related services<sup>81</sup>. The Centre has assisted UWS with the PBSA pilot by providing documents and agreements based on sample agreements, forms and other information provided by PBSC. It has also assisted with identifying placements<sup>82</sup>. The program is attractive because it is student-led. It is essentially a community service program that introduces law students to the pro bono ethos at the start of their legal studies<sup>83</sup>.

To date, student placements through PBSA have been made at a local Migrant Resource Centre and the Federal Magistrates' Court (through the forum mentioned above). At the time of completing this Report, UWS had just finished developing a new application to enable on-line registration. PBSA were also negotiating a project with the Criminal Justice Support Network<sup>84</sup> run by the Intellectual Disability Rights Service which would involve students in supporting people with intellectual disabilities (offenders, victims and witnesses). Training will be provided by the Criminal Justice Support Network and it is anticipated that students will volunteer

80 See [www.law.utoronto.ca/probono/index.htm](http://www.law.utoronto.ca/probono/index.htm)

81 See [www.uws.edu.au/about/acadorg/clb/sl/probono](http://www.uws.edu.au/about/acadorg/clb/sl/probono)

82 The UWS agreements and forms are available online at [www.uws.edu.au/about/acadorg/clb/sl/probono](http://www.uws.edu.au/about/acadorg/clb/sl/probono).

83 An evaluation of this pilot is expected in 2006.

84 [www.idrs.org.au/cjsn/](http://www.idrs.org.au/cjsn/)

## WHO ARE THE PRO BONO PROVIDERS?

for 12 month periods. UWS are also talking with the Professional Standards Council<sup>85</sup> about PBSA providing support to lawyers doing pro bono work for small associations, as well as working with a local community centre and an animal rights centre. UWS has been seeking funding for a coordinator, acknowledging that PBSC has such a position to drive the network.

### 2.6 Legal academics

It is unclear how much pro bono work is undertaken by legal academics in Australia. Anecdotally, it appears to be dependent on the personal initiative of individual academics and to a lesser extent the culture of the particular law school. Although some academics are visibly and actively involved in pro bono work, there does not appear to be any policy or any guidelines to direct academic resources towards pro bono work. Many academics are assessed against ‘community service’ or ‘administration/university service’ criteria for the purposes of performance review and promotion. However, what counts under these criteria appears to include achievements such as paid positions chairing government inquiries, but does not explicitly include pro bono legal assistance.

#### ***Pro bono in overseas law schools***

In the USA, the Association of American Law Schools (AALS) Commission on Pro Bono and Public Service has recommended that ‘all law schools adopt a formal policy to encourage and support faculty members to perform pro bono work’<sup>86</sup>. An AALS survey of Deans found that more than half who responded to the survey said that their school had no policy ‘with regard to requiring or encouraging faculty members to participate in public service or pro bono activities’. At most of the schools that did have policies, they simply took the form of a highly general statement that ‘service’ is considered along with scholarship and teaching in decisions about promotion or salaries<sup>87</sup>.

.....  
85 Professional Standards Councils are statutory bodies that approve and monitor schemes to improve professional standards, to protect consumers, and to limit the civil liability of professional groups. See [www.agd.nsw.gov.au/lawlink/professional\\_standards\\_council/psc\\_ll.nsf/pages/PSC\\_aboutus](http://www.agd.nsw.gov.au/lawlink/professional_standards_council/psc_ll.nsf/pages/PSC_aboutus)

86 See [www.aals.org/probono/report.html](http://www.aals.org/probono/report.html)

87 See [www.aals.org/probono/report2.html#work](http://www.aals.org/probono/report2.html#work)

## 2.7 Government lawyers

There are significant numbers of government lawyers in Australia. National statistics are difficult to state definitively but government lawyers make up 16% of the Australian Corporate Lawyers' Association's (ACLA) membership<sup>88</sup>. The Law Society of NSW collects and publishes information on a monthly basis and at the time of finalising this Report, government lawyers accounted for 11.2% of all solicitors practising in NSW<sup>89</sup>. The 2005 annual profile of solicitors in NSW indicates that the majority of government solicitors work in criminal law (41.1%), 26.4% in administrative law, 17.5% in civil litigation and 11.7% in advocacy. The vast majority are city-based<sup>90</sup>.

The Law Society's 2003/2004 Practising Certificate Survey asked respondents how many hours they spent on pro bono work in an average month. The survey results indicated that 54% of respondents from private law firms reported conducting pro bono work each month<sup>91</sup>, while 18% of government lawyer respondents reported undertaking pro bono<sup>92</sup>.

In October 2004, the Centre published an Information Paper on Government lawyers and pro bono<sup>93</sup>. Since its release, the following initiatives have been taken:

- In September 2005, the Commonwealth Attorney-General's Department re-issued their policy guidelines for approval of employment outside the Department and formally stated that it encourages all lawyers to undertake pro bono work to help disadvantaged or marginalised people to access the legal system. However, the policy included no 'agency' initiatives, nor any framework for such work.
- In Victoria, a new class of practising certificate for those engaged in legal practice for the purpose of volunteering at community legal centres has been introduced as part of the 'national model' changes to the *Legal Profession Act 2004 (Vic)*. There is no fee for the certificate which will make it easier for government lawyers, retired lawyers or those on temporary

88 See ACLA *Annual Report 2005* [www.acla.com.au/Portals/0/downloads/Annual%20Report%202005%20-%20final.pdf](http://www.acla.com.au/Portals/0/downloads/Annual%20Report%202005%20-%20final.pdf) at 5.

89 See *Statistics and Profiles of NSW Solicitors*, August 2006 at [www.lawsociety.com.au/page.asp?partID=934](http://www.lawsociety.com.au/page.asp?partID=934)

90 See *2005 Profile of the Solicitors of NSW* at [www.lawsociety.com.au/uploads/files/1151459771531\\_0.5626301848610452.pdf](http://www.lawsociety.com.au/uploads/files/1151459771531_0.5626301848610452.pdf) at 30.

91 Data provided by the Law Society of NSW to the Centre from NSW Law Society Practising Certificate Survey 2003–2004.

92 9.1% did an average of 1-4 hours; 3.7% 5-10 hours; 1.1% 11-20 hours; 3.9% more than 20 hours. Note that there appears to be an increase in government lawyer pro bono: in a survey conducted by the NSW Law Society in 2000, of those lawyers doing pro bono, only 5% were government lawyers.

93 *Government Lawyers and Pro Bono: Information Paper*, October 2004 [www.nationalprobono.org.au/documents/NPBRCGovtlawyerspaper.doc](http://www.nationalprobono.org.au/documents/NPBRCGovtlawyerspaper.doc)

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leave to take part in work at CLCs<sup>94</sup>. Corporate lawyers are not eligible to hold this certificate.

- The Australian Government Solicitor (AGS) revised its pro bono policy in mid-2005 with a view to facilitating pro bono work that staff wish to undertake.

The Centre's Information Paper discussed some of the barriers and obstacles for government lawyer pro bono. For example, pro bono legal work can be problematic for government lawyers who may face conflict of interest restrictions, limitations on the use of office resources and statutory restrictions constraining their ability to perform pro bono work. There are also issues including practising certificate limitations, insurance, expertise and training in areas of law in which pro bono clients are likely to have need.

There are 'work-arounds' to practising certificate and insurance issues, such as volunteering at an agency where the legal work is done under the practising certificate of the principal solicitor (most commonly with a CLC) and within the bounds of that agency's professional indemnity insurance policy. There are also other legal pro bono activities, such as delivering training or community legal education seminars to not-for-profit organisations that don't raise these issues. Many government lawyers undertake volunteer work at CLCs, most commonly in evening advice sessions, although again there is no hard data on this.

Some government lawyers undertake pro bono after hours or while on leave from their jobs. Others are involved with human rights groups or projects. The Centre is also aware of some government lawyers participating in community legal education programs. For example, several lawyers from government departments as well as private practitioners have participated in a community information session on planning law organised by Redfern Legal Centre in Sydney. Some government lawyers contribute to community legal education in other ways, such as writing material for the Law Handbooks produced in each state.

It seems that government lawyer pro bono work is mainly an individual pursuit rather than part of the machinery of government departments or agencies ('agency pro bono') although agencies can and do support their lawyers to undertake pro bono work. For example, the Legal Aid Commission of New South Wales facilitates flexible 'leave without pay' arrangements for staff to work with Aboriginal Legal Services on 'secondment'<sup>95</sup>.

94 See Part 2.4, *Legal Profession Act 2004* (VIC).

95 Legal Aid Commission of NSW – Submission to the Senate Inquiry on Access to Justice and Legal Aid, October 2003 at 18.

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The Centre is aware of only a small number of examples of pro bono undertaken at an institutional level. The Brisbane office of the Australian Competition and Consumer Commission (ACCC) is a member of the Queensland Public Interest Law Clearing House (QPILCH) and has offered QPILCH use of its library and favoured consideration for use of its videoconferencing facilities. In Victoria, TAC (Transport Accident Commission) Law<sup>96</sup> has become a member of PILCH (Vic) and provides PILCH with secondee lawyers and administrative staff.

In the USA, Government lawyers are actively encouraged to undertake pro bono work. A recent American Bar Association initiative provides online resources for government agencies considering pro bono programs, and includes guidelines on how to set up an agency program as well as model policies and procedures for adaptation - see [www.abanet.org/govpub/probono.html](http://www.abanet.org/govpub/probono.html).

In Ontario Canada, city-based government lawyers employed by the Ontario Ministry of the Attorney General in partnership with the Nishnawbe-Aski Legal Services (NALS) Corporation, provide pro bono assistance to rural communities within the Nishnawbe-Aski Nation (NAN) in northern Ontario via a ‘TeleJustice Project’<sup>97</sup>. In the first year, the Attorney General is allowing about 20-30 lawyers to donate a limited number of paid hours to provide pro bono services using videoconferencing, an online question/answer website, community legal education and written summary advice. Lawyers have been asked to commit about 20 hours each over the first year<sup>98</sup>.

The Centre is yet to hear of any agency-auspiced pro bono program in Australia. As noted in Chapter 8, there is scope for government to better encourage and support pro bono work by its employed lawyers.

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96 TAC Law is a division of the Transport Accident Commission (TAC) and is the exclusive provider of personal injury legal services to the TAC. TAC Law is also a member of the Victorian WorkCover Authority legal panel.

97 ‘Crown lawyers to provide legal services for free’, *Toronto Star* at A17, May 7 2004; Notes for Remarks by Michael J Bryant, Attorney General of Ontario, Pro Bono Law Ontario Awards Dinner, May 6 2004.

98 See Pro Bono Law Ontario e-newsletter, Fall 2005, at [www.pblo.org/](http://www.pblo.org/)



### 2.8 Corporate lawyers

Again, there are no conclusive national statistics for corporate lawyers in Australia. The Australian Corporate Lawyers Association (ACLA) had almost 2,400 members at 30 June 2005<sup>99</sup>. As noted above, 16% of these are government lawyers. ACLA estimates that there are about 6,750 in-house lawyers in Australia which, if correct, indicates that in-house lawyers constitute around 18% of the lawyers in Australia<sup>100</sup>. Despite these numbers, it appears that there is little pro bono activity among corporate lawyers in Australia<sup>101</sup>.

In NSW, approximately 14% of lawyers in NSW practice as corporate lawyers<sup>102</sup>. While the data is perhaps out of date, the October 2003 Practising Certificate Survey found that only 18% of corporate lawyers reported undertaking some pro bono work<sup>103</sup>.

There is untapped potential for corporations to become involved in pro bono, particularly in providing advice or doing work for not-for-profit community organisations, assisting them with public interest objectives. There is also scope for law firms with pro bono practices to encourage and guide their corporate clients to undertake pro bono work, or to provide guidance to their corporate clients who may be interested in undertaking community service work and/or making philanthropic contributions as part of their corporate social responsibility aspirations or commitments. This is increasingly popular in the USA.

The following are some examples of corporate pro bono in Australia.

#### **Tabcorp**

Tabcorp has been a member of PILCH (Vic) since June 2001. Staff from Tabcorp have worked with PILCH to assist an environmental educational organisation with advice about employment contracts, intellectual property matters and corporate structure issues. Tabcorp has also given company law and taxation advice to a refugee centre which provides support, counselling, advocacy and basic training services to asylum seekers in Victoria<sup>104</sup>. In-kind assistance provided to PILCH (Vic) by Tabcorp includes printing their newsletter.

99 ACLA 2005 Annual Report at [www.acla.com.au/Portals/0/downloads/Annual%20Report%202005%20-%20final.pdf](http://www.acla.com.au/Portals/0/downloads/Annual%20Report%202005%20-%20final.pdf) at 4.

100 Based on 36,124 solicitors and barristers in Australia, Australian Bureau of Statistics (2001–2002).

101 In contrast corporate pro bono is growing in the USA, where it includes corporations forming partnerships with commercial law firms to undertake pro bono projects.

102 See 2005 *Profile of the Solicitors of NSW* at [www.lawsociety.com.au/uploads/files/1151459771531\\_0.5626301848610452.pdf](http://www.lawsociety.com.au/uploads/files/1151459771531_0.5626301848610452.pdf) at 16.

103 NSW Law Society Practising Certificate Survey 2003-2004.

104 See TABCORP, *State of Affairs*, # 7, June 2002 at [www.tabcorp.com.au](http://www.tabcorp.com.au)



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### ***National Australia Bank***

The National Australia Bank (NAB) is also a member of PILCH (Vic) and its lawyers are actively involved in the Homeless Persons' Legal Clinic (HPLC) in Melbourne. Recently, as a referral from PILCH, NAB's corporate lawyers assisted with the legal aspects of an internal restructure and management of assets of an incorporated not-for-profit organisation. NAB have also organised and funded a series of community legal education (CLE) sessions at the Lazarus Centre, which provides emergency assistance for homeless people in Melbourne. The CLE sessions were aimed at providing homeless people with information on their rights and included sessions such as how to access legal services, mental health rights, and dealing with social security and Centrelink debt.

The Centre is keen to hear about and/or assist corporations who want to develop their pro bono activities.

## 3 How is pro bono delivered?

### 3.1 Introduction

Pro bono legal work takes many forms. While much of it presumably involves legal advice and representation of individual clients in the course of normal practice, other examples include preparation of law reform submissions, corporate governance, transactional assistance and training for community organisations and various forms of community legal education. Some law firms offer non-legal assistance, including secretarial and publishing support, to community organisations and charities. As part of their pro bono commitment, some firms fund positions at community organisations. For example, since 2001, Allens Arthur Robinson (AAR) have funded the lawyer position with the Public Interest Advocacy Centre's Indigenous Justice Project in Sydney. AAR also pay for the articled clerk position at Fitzroy Community Legal Centre in Melbourne.

The ABS statistics<sup>105</sup> indicate that about 12% of reported pro bono work is in the form of free community legal education and law reform. A major proportion of the balance presumably comprises direct legal services for clients.

Barristers provide a significant amount of pro bono assistance and it is reasonable to assume that the vast majority of their pro bono work involves representation and advice. Activities may also include being involved in a pro bono duty lawyer scheme, or settling a submission to a court or inquiry.

The main emphasis in this section is on solicitor and firm models of pro bono service delivery. Many providers adopt a combination of these models. This is only an overview, and more details can be found in the *Pro Bono Manual*<sup>106</sup>. The examples here do not purport to exhaustively represent pro bono providers' practice.

Lawyers and law firm community service programs are not included here as a 'model' of pro bono legal service delivery. However, the Centre notes that there are circumstances when lawyers' community service/non-legal work does cross-over into pro bono legal service.

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105 Australian Bureau of Statistics, Legal Practices 2001-2, Report No 8667.0, 25 June 2003.

106 [www.nationalprobono.org.au/probonomanual/](http://www.nationalprobono.org.au/probonomanual/)

### 3.2 Models of pro bono service delivery

#### ***In-practice/in-firm pro bono***

The archetypal form of pro bono is a lawyer or firm accepting instructions to advise or represent an individual as part of their usual legal practice. Client instructions are accepted and services are provided in the same way as for a paying client. The only difference is that the client pays nothing or pays an agreed, but substantially reduced, amount.

Firms and lawyers also provide ‘transactional’ assistance which may directly or indirectly improve disadvantaged clients’ access to justice through the provision of legal assistance to community-based welfare, legal or other advocacy organisations.

This typically involves helping organisations with governance and company structure issues, such as formalising or updating constitutions or obtaining charitable tax concessions. It may also involve assistance with leases or with intellectual property matters. For example, Blake Dawson Waldron (BDW) offers transactional assistance to Lou’s Place, a day centre in inner Sydney for women in crisis and their children. BDW provide administrative assistance, advice on organisational issues such as privacy law compliance, occupational health and safety matters, and tax. Much of the work filtered to law firms through the Public Interest Law Clearing Houses (PILCHs) across Australia involves this kind of work<sup>107</sup>.

In-house pro bono advice and representation might involve initial advice only, or acting in an on-going capacity. Representation may involve court or tribunal appearances, as well as mediations or negotiations – either face to face, over the telephone or by using video-link technology. Representation work may be for clients, as the firm’s own in-house clients, while other work may involve participating in schemes with CLCs, for example, participating as duty lawyers on court rosters for clients of the Women’s Domestic Violence Court Assistance Schemes in NSW.

Pro bono lawyers also contribute to community legal education and law reform projects. For example, some firms have organised seminars for representatives from several community organisations rather than advising individual organisations. These have included sessions for not-for-profits on topics including directors’ duties, risk management, employment, structuring, taxation, privacy and contracts<sup>108</sup>. Others have organised continuing legal education seminars for CLCs on areas of law relevant to CLC practice such as consumer protection, defamation and discrimination<sup>109</sup>. Lawyers participating in pro bono initiatives with the community sector, such as the

107 See Annual Reports of PILCH (NSW), PILCH (Victoria) and QPILCH.

108 For example, Freehills has organised a number of well-attended seminars on various aspects of tax law for not-for-profit organisations (see Freehills Pro Bono Annual Reports); Blake Dawson Waldron has organised seminars.

109 Training organised by Blake Dawson Waldron for CLC workers, see Blake Dawson Waldron *Annual Report 2005*.

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Homeless Persons' Legal Services or Clinics (in Sydney, Melbourne and Brisbane) sometimes contribute to law reform/policy initiatives, often informed by the experiences of clients of those services.

A good illustration of a firm's focus on developing expertise in a particular area of practice, is BDW's experience with clients with intellectual disability or mental illness. BDW's work in this area includes casework, but it has led to law reform work/submissions to government on:

- the lack of an appropriate mechanism to appoint an alternative decision-maker in Tribunals for a person lacking capacity;
- what happens when an apprehended violence order is sought against a person who lacks capacity;
- what happens when a s.32 *Mental Health (Criminal Procedure) Act 1990* (NSW) application is not granted in strictly summary matters where a person lacks capacity<sup>110</sup>; and
- a recent NSW Attorney General's Discussion Paper on capacity<sup>111</sup>.

Pro bono advice need not be face-to-face. BDW's Sydney office runs a telephone advice service with the Far West CLC in Broken Hill, NSW. The CLC provides the firm in advance with a list of clients and adverse parties so conflicts checks can be undertaken. If there is no conflict, the CLC forwards the client's documents to BDW who telephone the client directly to provide advice<sup>112</sup>. As noted above, there may also be capacity to provide representation by video-link facilities. Lawyers from Minter Ellisons, working with the Homeless Persons' Legal Service operated by QPILCH, are providing telephone advice on a weekly basis to clients of Mission Australia's 'Pathways to Prevention' project operating in Inala - one of Brisbane's most disadvantaged suburbs. Clients are assisted at Pathways by caseworkers who also provide interpreter services as they access the pro bono lawyer advice line.

### **Co-counselling arrangements with CLCs**

Co-counselling arrangements are a relatively recent development where firms and CLCs work together on a matter – either for an individual client or as a law reform initiative. Under this arrangement the CLC typically does the initial work establishing the merits of a case or issue and maintains the client relationship. The firm may

110 Section 32(3) of the *Mental Health (Criminal Procedure) Act 1990* (NSW) provides Local Court magistrates with a discretion to dismiss the charges alleged against a person with an intellectual disability, conditionally or unconditionally. This diverts the person with an intellectual disability out of the mainstream criminal justice system in which the risk of imprisonment can be high. See, Peter McGhee and Lee-May Saw 'Chiselling the Bars – Acting for people with an intellectual disability' in *Law Society Journal of NSW*, October 2005 at 61.

111 Attorney-General's Department of NSW, Discussion Paper, 'Are the rights of people whose capacity is in question being adequately promoted and protected?' (28 March 2006).

112 Anne Cregan, Blake Dawson Waldron Pro Bono Coordinator, 17 June 2005.

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then give a written advice, do background research and draft court documents, as required. This may involve the firm or CLC being solicitor on the record. In some cases where a quick result is sought, the pro bono firm may use its letterhead for pre-litigation correspondence, or go on the record for court documents. In other cases, the CLC will act as solicitor on the record, with the firm providing advice and drafting assistance, preparing witness statements as well as advice on strategy, if required.

Co-counselling arrangements work well: they may allow the CLC to be the public face of the litigation or campaign while harnessing the resources of pro bono lawyers for 'behind the scenes' assistance which a CLC may not have the expertise or resources to manage alone.

Examples of co-counselling arrangements include:

- Prisoners' Legal Service (PLS) in Brisbane, with the assistance of Blake Dawson Waldron (BDW), mounted a High Court challenge to Queensland legislation that allowed the Attorney-General to apply to detain a prisoner convicted of a serious sexual offence, indefinitely beyond the original sentence<sup>113</sup>. Under the co-counselling arrangements, BDW took on a 'project management' role in partnership with PLS and others, to provide the prisoner with legal and other assistance. The matter was ultimately not successful before the High Court. However, the legal team has assisted the client with a review under the legislation and is exploring strategies, including approaching the United Nations.
- Melbourne-based law firm Henrik Lassen has worked with Fitzroy Legal Service (FLS) to assist a client with shoplifting and compensation matters. FLS acted for the client on the criminal charge and the law firm assisted FLS with the civil claim, which included advice on the merits and an opinion brief on discovery. FLS remained the solicitor on the record and did the client liaison work. It is likely that without the assistance and expertise from both the CLC and the pro bono firm, the matter would not have proceeded.

### **Community legal education and law reform**

Pro bono lawyers can also contribute to community legal education and law reform projects or initiatives. For example, rather than provide individual community organisations with information about the effect of changes to tax laws, Freehills have held well-attended seminars about taxation and corporate governance requirements for representatives of a number of community organisations. BDW

<sup>113</sup> See *Fardon v Attorney-General of Queensland* (2004) 210 ALR 50; see also Blake Dawson Waldron *Pro Bono Annual Report* 2004-2005 at 24.

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have also organised community legal education sessions for CLC workers in areas of law relevant to community law practice. Some PILCHs have arranged seminars on corporate government issues for not-for-profit organisations.

A number of lawyers also contribute pro bono to publications such as state editions of *The Law Handbook*, a plain English guide to the law.

Some lawyers use their expertise to assist public advocacy organisations with law reform proposals or to comment on other proposals, including government proposals. These submissions effectively combine the significant knowledge, expertise and resources of community organisations with the skills of private firm lawyers. Some examples include:

- PILCH (Vic) member firms, including Clayton Utz and Minter Ellison, researched and drafted law reform submissions for PILCH Victoria's Homeless Persons' Legal Clinic.
- Blake Dawson Waldron assisted the Federation of Community Legal Centres in Victoria with a response to the Victorian Law Reform Commission's Consultation Paper: Review of Family Violence Laws.
- After seeing a number of women at the Katherine office of the Northern Australian Aboriginal Justice Agency (NAAJA)<sup>114</sup> who had spent their 'baby bonus' payments on cars that broke down soon after purchase, NAAJA, with assistance from the BDW pro bono secondee, commenced CLE sessions at neo-natal classes at the local hospital to advise people on issues relating to buying a car.
- Pro bono barristers assisted QPILCH prepare a submission to a Senate Inquiry into the Indigenous 'stolen wages' issue, highlighting the inadequacies of the recent compensation scheme offered by the Queensland Government<sup>115</sup>.

Several firms with active pro bono practices independently prepared submissions to and gave evidence before the Senate Legal and Constitutional Reference Committee's Inquiry into Legal Aid and Access to Justice. In brief, these firms submitted that their programs work most effectively with properly resourced and functioning CLCs and legal aid bodies, and that more funding is required to sustain the leverage obtained from services provided by the private profession<sup>116</sup>.

Some legal professional associations also provide community legal education

114 Formerly Katherine Regional Aboriginal Legal Aid Service (KRALAS).

115 The inquiry follows investigations which revealed that state governments put systems in place to manage and distribute Indigenous workers' wages between the 1890s and 1972. These systems were rife with mismanagement and fraud, and many workers were effectively denied their wages. Submissions to the Inquiry can be found at [www.aph.gov.au/Senate/committee/legcon\\_ctte/stolen\\_wages/submissions/sublist.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/stolen_wages/submissions/sublist.htm)

116 See [www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/)

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through speakers' bureaus or through Law Week initiatives. Others have also offered continuing legal education/professional development opportunities to CLCs, often in the context of training seminars. Some of these are effectively done during CLC conferences, to take advantage of the greater regional representation of CLC workers on these occasions. There are many examples of this kind of assistance, including the training provided by Freehills and BDW, mentioned above. Also, Harmers Workplace Lawyers has provided mandatory continuing legal education training on legal practice issues to CLC workers at NSW CLCs' state conferences.

### **Outreach services**

Outreach services involve lawyers providing legal advice, and sometimes ongoing assistance at outreach locations, usually at the premises of a community organisation and/or a CLC. The legal assistance may be part of a discrete project of limited duration, or ideally, a partnership arrangement on an ongoing basis.

Some of these partnerships are described in the Centre's paper *Working Together: Multi-tiered pro bono relationships between law firms and community legal organisations*<sup>117</sup>.

The following examples of outreach services illustrate their scope:

- Women's Legal Services NSW (WLS) in partnership with Gilbert+Tobin (G+T) have provided legal services to clients of two community centres<sup>118</sup> in the Wyong area on the NSW Central Coast, an area where high unmet legal need was identified. WLS lawyers attend Wyong on a weekly basis, while G+T provide lawyers on a fortnightly basis.
- Blake Dawson Waldron (BDW) provides a weekly legal service at Lou's Place, a day centre in inner Sydney for women in crisis and their children. Every Tuesday, a BDW solicitor provides legal advice, advocacy and targeted referrals in all areas of law (primarily victims' compensation, domestic violence, tenancy, family law and credit and debt). Solicitors are seconded to Lou's Place for a minimum of six months. Some matters are referred back to BDW's offices for in-house pro bono assistance. BDW also sponsors Lou's Place to open on Saturdays when a number of BDW lawyers and other staff volunteer their services.

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117 See Publications at [www.nationalprobono.org.au/](http://www.nationalprobono.org.au/)

118 Rose Cottage and the Wyong Neighbourhood Centre.



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- In 2005, the Darwin office of Clayton Utz commenced a project with the Top End Women's Legal Service (TEWLS) to provide civil legal advice services to the Indigenous community on Groote Eylandt (630 km from Darwin, off the east coast of Arnhem Land in the Gulf of Carpentaria). The island is wholly owned by the Anindilyakwa people. There is no permanent legal service although the Nhulunbuy Office of the North Australian Aboriginal Justice Agency (formerly Miwatj Aboriginal Legal Service) and TEWLS visit each month to provide legal assistance in the areas of criminal law, family law and domestic violence. However, as for many people in the Northern Territory, particularly Indigenous people, there is no access to civil lawyers. Under this pro bono initiative, two Clayton Utz lawyers accompany and work alongside TEWLS at the monthly legal clinics. TEWLS has years of experience in working in Aboriginal communities, and Clayton Utz has the benefit of dealing with local Indigenous women employed by TEWLS as community liaison workers, to help ensure that the community feels comfortable with outside lawyers, and that the legal service is culturally appropriate.

A number of CLCs, such as the Arts Law Centre and the Refugee Advice and Casework Service (RACS) in Sydney have arrangements with a number of firms that provide solicitors (and migration agents in the case of RACS) to give advice to their clients. Other firms send lawyers to community centres. For example, Minter Ellison sends lawyers on a weekly basis to a community centre in Claymore in Sydney's south-west, to provide advice, information and referrals.

Some outreach services involve the provision of non-legal, as well as legal, assistance. BDW's assistance to Lou's Place includes the provision of facilities (such as offices, and transport). BDW also offers 'transactional' services in the form of administrative assistance, advice on privacy law compliance, occupational health and safety matters and tax. Other such 'multi-tiered' relationships are discussed in further detail below.

### ***Secondments***

Secondments to community-based legal organisations can be an effective way for firms to involve themselves in pro bono activities in the community. While there may not always be a clear distinction between secondments and outreach services, secondments generally involve the secondee being supervised by a solicitor at the community organisation.

Secondments may be:

- full-time or part-time and for a fixed period (for example, for three, six or



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twelve months). A fixed period secondment may be part of a single firm or multi-firm rotation that ensures the position is always available to the community legal organisation;

- sessional (for example, a firm solicitor attends a community legal organisation to operate an advice clinic one afternoon each week);
- short-term locums to cover staff shortages; or
- specific secondments (for example, for the period of a particular project or initiative of a community organisation).

Secondments generally place pro bono lawyers within community legal organisations. Through secondments, firms and individual lawyers develop and strengthen their relationships with the organisations they work with.

Secondments also have collateral benefits. They contribute to the professional development of staff and also raise awareness of social issues within law firms. Seconded solicitors bring back to the firm enhanced legal, communication and managerial skills. Where secondees have an increased sense of professional satisfaction, firms can benefit from improved employee morale. Secondments also increase the visibility of law firm pro bono programs and can engender an improved sense of community within a firm and a continuing commitment to pro bono work.

Secondments may be for specific purposes or discrete projects. For example, until recently, BDW seconded a full-time solicitor to the Aboriginal Legal Service in Sydney<sup>119</sup> to run the prison-visiting service for juveniles in detention. Lawyers from Freehills and Minter Ellison have been seconded to the Public Interest Advocacy Centre (PIAC) in Sydney for half a day per week to assess applications for assistance from asylum seekers in detention. Minters also seconded a lawyer to the Aboriginal Legal Service in Sydney<sup>120</sup> for 2 weeks to assist it during the coronial inquiry into the death of Thomas Hickey.

Some firm members of Public Interest Law Clearing Houses (PILCHs) second lawyers and/or vacation clerks to PILCH offices for certain periods to assist with, amongst other things, the administration of referral schemes and assessment of matters as well as undertaking specific projects<sup>121</sup>. TAC Law, a not-for-profit law firm which is the exclusive provider of personal injury legal services to the Transport Accident Commission and a member of the Victorian WorkCover Authority legal panel, has become a PILCH (Vic) member, and seconds four of its lawyers there for 12 months (three months for each secondee). Additionally, TAC Law seconds

119 Formerly Sydney Regional Aboriginal Corporation Legal Service (SRACLS).

120 Formerly Sydney Regional Aboriginal Corporation Legal Service (SRACLS).

121 For information about solicitors' experiences of their secondments to PILCH, see *PILCH Matters*, Issue 5, October 2003 at [www.pilch.org.au](http://www.pilch.org.au) and 'Pro bono converts commercial to community', AFR, 29 July 2005, at 59.

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legal assistants to PILCH one day per week on an ongoing basis. TAC Law's secondments initiative is part of its staff development program which aims to give all staff the opportunity to experience working in a different legal environment, while at the same time providing the firm with the opportunity to participate in pro bono work.<sup>122</sup>

The Centre has made available resources in the *Pro Bono Manual* for firms interested in exploring secondments. They include some best-practice guidelines and secondment agreements<sup>123</sup>. Without going into detail, one of the most significant issues in secondments is the benefit of entering into a relationship with a long-term vision and the accompanying support that sustain both the secondee and the community organisation.

### **Examples of secondments**

Some of the larger firms with pro bono programs have an extensive 'external' pro bono program which includes rotating secondments, usually to CLCs. The advantage of rotating secondments is that the firm and organisation have an opportunity to develop ongoing and expanding relationships.

Examples of secondments, which include providing lawyers on outreaches to CLCs or other community organisations, are listed below. These firms and many others additionally second lawyers to the various PILCHs to assist with day-to-day activities and to participate in the various PILCH-aided Homeless Persons' Legal Services/Clinics in Melbourne, Sydney and Brisbane.

### **Clayton Utz:**

- has seconded a senior solicitor to manage and supervise the work of QPILCH's Consumer Law Advice Clinic in Brisbane 3 days a week<sup>124</sup>;
- has provided a number short-term secondments to the Kimberley Community Legal Service in Kununurra in remote Western Australia;
- provides a lawyer from their Canberra offices each afternoon of the week to give advice at the First Stop Legal and Referral Service for Young People;
- sends lawyers to Groote Eyland once a month with Top End Women's Legal Service.

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122 See *PILCH Matters*, Issue 6/May 2004 at 4.

123 See sample Secondment agreements in the *Pro Bono Manual* at 3.11 at [www.nationalprobono.org.au/probonomanual/ProBono\\_Manual\\_03.htm](http://www.nationalprobono.org.au/probonomanual/ProBono_Manual_03.htm); and 'Secondment Issues' at [www.nationalprobono.org.au/probonomanual/ProBono\\_Manual\\_04.htm#1](http://www.nationalprobono.org.au/probonomanual/ProBono_Manual_04.htm#1)

124 See [www.qpilch.org.au/01\\_cms/details.asp?ID=8](http://www.qpilch.org.au/01_cms/details.asp?ID=8). Note that as of September 2006, this secondment is being arranged with lawyers from BDW's Brisbane offices.

## MAPPING PRO BONO IN AUSTRALIA

### **Freehills:**

- seconds a full-time solicitor to Kingsford Legal Centre in Sydney every 6 months;
- seconds solicitors to Shopfront Youth Legal Centre in Sydney every 6 months and supports a number of solicitor and administrative staff positions at Shopfront<sup>125</sup>;
- provides short-term secondments to the Sussex St Legal Centre in Perth for all recently graduated lawyers in their Perth offices;
- seconds lawyers to the Family Violence Protection Legal Service in Walgett in remote NSW as part of its arrangement with Women's Legal Services NSW.

### **Mallesons:**

- seconds a full time lawyer position at the National Children's & Youth Law Centre (NCYLC) on 3 month rotations;
- sends two lawyers 7 mornings each month to attend the City of Sydney Law Society's service at Downing Centre Local Court in Sydney.

### **Gilbert+Tobin:**

- has seconded a full-time solicitor to the Cape York Land Council for 6 months;
- seconds a solicitor to Redfern Legal Centre to attend the Downing Centre Local Court for mentions as part of the Women's Domestic Violence Court Assistance Scheme (WDVCAS) coordinated by the CLC.

### **Allens Arthur Robison:**

- provides two legal staff for a two-hour period one afternoon each week to attend Passages Resource Centre, an inner Perth city drop-in centre for homeless youth, alcohol and drug misusers and young people with social problems;
- has recently commenced posting a secondee to Kingsford Legal Centre in Sydney for 6 months each year.

### **Blake Dawson Waldron:**

- has provided three secondees to the Consumer Credit Legal Centre, Victoria;
- provides a full time secondee at the Mt Druitt Community Legal Centre for a minimum of six months;
- provides a full-time secondee to Youthlaw legal centre in Melbourne;
- provides a secondee solicitor one day per week to provide a credit and debt service to clients at Redfern Legal Centre;
- provides a full time secondee to North Australia Aboriginal Justice Agency

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125 Freehills Pro Bono Report 2005, see [www.freehills.com.au/files/ProBonoReport\\_2005.pdf](http://www.freehills.com.au/files/ProBonoReport_2005.pdf)

## HOW IS PRO BONO DELIVERED?

- (NAAJA) (Katherine Office) in the NT, for six months at a time;
- provides solicitors, for periods of at least 6 months, to attend the Exodus Foundation in Ashfield, Sydney and Lou's Place, a day centre for women in crisis in Kings Cross, Sydney, one day per week;
- provides a 'virtual' secondment to Far West CLC in Broken Hill, NSW. Under this arrangement a Sydney-based lawyer provides advice and minor assistance to clients of the CLC by telephone each fortnight;
- provided a full-time secondee to the Sydney offices of the Aboriginal Legal Service from 2000–2005<sup>126</sup>.

### **Minter Ellison:**

- sends lawyers two mornings a week to provide advice, casework and referrals at an advice clinic auspiced by WorkVentures in Claymore, in south-west Sydney;
- has arranged a short-term secondee (3 months) to Darebin CLC in Victoria.

### ***The Victorian Pro Bono Secondment Scheme – Attorney-General's Community Law Partnerships***

The Pro Bono Secondment Scheme (PBSS) commenced in Victoria in 2002. It was a state-wide secondment scheme, originally coordinated by Victoria Legal Aid (VLA) as a joint initiative of Victoria Legal Aid, the Federation of Community Legal Centres (Vic), the Department of Justice and the Law Institute of Victoria. The PBSS involved an initial feasibility assessment by a Working Group, then a 12 month pilot project in 2002–2003 in which six law firms provided ten lawyer secondees to eight community legal centres and one section of VLA. The secondments were, in the main, full-time positions for six month periods<sup>127</sup>.

The Victorian Pro Bono Secondment Scheme Report documents some of the experiences of the community/legal aid sector and law firm participants<sup>128</sup>. The Report notes that the experience of secondees was positive: the secondment was enjoyable and important legal work was undertaken and new skills developed. Community organisations reported that having a secondee allowed them to increase some elements of their service delivery program, for example by undertaking more complex casework or allowing centre staff to pursue long-standing plans for community legal education or law reform work.

The six firms involved in the scheme stated they were satisfied with their involvement in the pilot and that it had met the firm's expectations. Firms gave two significant reasons for being involved. The first was the desire to become more directly involved

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126 Formerly Sydney Regional Aboriginal Corporation Legal Service (SRACLS).

127 See [www.justice.vic.gov.au](http://www.justice.vic.gov.au)

128 See Pro Bono Secondment Scheme: Report on the 2002–2003 Pilot Scheme (April 2004), at [www.justice.vic.gov.au/CA256902000FE154/Lookup/GLS\\_PDFs/\\$file/ProBonoSecondmentSchemeReport\\_April2004.pdf#xml=search.justice.vic.gov.au/isysquery/irl3dd3/1/hilite](http://www.justice.vic.gov.au/CA256902000FE154/Lookup/GLS_PDFs/$file/ProBonoSecondmentSchemeReport_April2004.pdf#xml=search.justice.vic.gov.au/isysquery/irl3dd3/1/hilite)

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in community legal service provision and structured pro bono schemes. Secondly, two firms mentioned that it assisted them in meeting obligations under the Government Legal Services Panel [See 6.1]. Since 2002, Victorian Government panel firms have directed \$2.9 million in legal services to CLCs through the PBSS<sup>129</sup>.

In October 2005, management of the PBSS was transferred from the VLA to the Federation of Community Legal Centres (Victoria)<sup>130</sup>, and it was re-named *Attorney-General's Community Law Partnerships*<sup>131</sup>. The more flexible scheme will explore and promote pro bono partnerships such as those demonstrated by Mallesons with Brimbank CLC, Wisewoulds and Springvale CLC and Maddocks and the Mental Health Legal Centre. The Victoria Law Foundation has provided seed funding for the Federation of Community Legal Centre's greater involvement in these partnerships.

### **Specialist legal services**

Lawyers individually, or in partnership with other firms, create or contribute to specialist legal services.

Individual firms typically contribute funds, resources and staff to establish and/or maintain a community-based service. Examples of this kind of specialist service include the homeless persons' legal clinics that now exist in Melbourne, Queensland, Sydney and Adelaide<sup>132</sup>, Shopfront Youth Legal Service (Shopfront) in Sydney and the Youth Legal Service in Melbourne.

Brief descriptions of some of these specialist services follow.

### **Homeless Persons' Legal Clinics/Services**

The Homeless Persons' Legal Clinics/Services in Melbourne<sup>133</sup>, Brisbane<sup>134</sup> and Sydney<sup>135</sup> have been established by the PILCHs in those respective cities. The clinics provide free legal assistance to, and advocacy on behalf of, people who are homeless or at risk of homelessness. While service delivery and focus by the clinics varies from state to state, they generally use the same fundamental model. Services are provided by PILCH members - pro bono lawyers from participating law firms and legal departments. Civil, administrative and some criminal advice and information are provided direct to clients at crisis accommodation centres and welfare agencies

129 See Government Legal Services Annual Report 2004-2005 at 10, at [www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/cbf4d74f19d079c/GLS%20ANNUAL%20REPORT200405.pdf](http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/cbf4d74f19d079c/GLS%20ANNUAL%20REPORT200405.pdf)

130 See [www.communitylaw.org.au/fedclc/pages/AboutUs](http://www.communitylaw.org.au/fedclc/pages/AboutUs)

131 Address to the Victorian Law Foundation's Annual Pro Bono Coordinators' Workshop 17<sup>th</sup> to 19<sup>th</sup> of October in Queenscliff, Victoria.

132 Note that the Adelaide outreach is a slightly different model to the services in other states.

133 See [www.pilch.org.au](http://www.pilch.org.au)

134 See [www.qpilch.org.au/01\\_cms/details.asp?ID=7](http://www.qpilch.org.au/01_cms/details.asp?ID=7)

135 See [piac.asn.au/legal/hpls.html](http://piac.asn.au/legal/hpls.html)

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used by homeless clients. Each firm is responsible for the provision of services (usually on a roster system) at one or two host agencies on a weekly or fortnightly basis. In addition to providing legal services, the clinics seek to identify the range of legal issues facing homeless people, identify gaps in the delivery of services, and conduct advocacy regarding relevant law reform and social policy issues.

In Adelaide, a hybrid model targeting homeless people or those at risk of homelessness is the Adelaide Legal Outreach Service (ALOS)<sup>136</sup>. ALOS also delivers services on-site at a location frequented by homeless people. ALOS differs from the other Homeless Persons' Legal Clinics in that the services are provided by law students from the Adelaide University Law School, under the supervision of practitioners. Clients are assisted at a community organisation (Westcare) and are given on the spot advice or referred to more appropriate agencies such as the Legal Services Commission.

Also in Adelaide, a new Welfare Rights Centre Housing Legal Clinic was launched in August 2006. Pro bono legal services are provided at different venues (currently the Magdalene Centre and the Byron Place Community Centre) by Minter Ellison, Thomson Playford and Kain C&C with other firms likely to participate in the future. Funding has been provided by the South Australian Government through the Department of Families and Communities. The Morialta Trust has granted \$20,000 to the new clinic to assist in expanding services to families and young people.

And in Western Australia, the Attorney-General has made available \$25,000 for a scoping study to investigate the feasibility of establishing a WA Homeless Persons Legal Clinic. Blake Dawson Waldron will administer the grant, overseen by a Steering Committee. The study will be conducted by Cityplace Shelter and the Tenants' Advice Service of Western Australia. It is expected to be conducted over a three month period in the second half of 2006.

### **Shopfront**

Shopfront is a legal service for homeless and disadvantaged young people in Sydney. It was established in 1993 as a partnership between Freehills and Mission Australia and later, the Salvation Army. Shopfront's staff (two permanent solicitors and a permanent paralegal as well as a seconded solicitor and a legal assistant) are all employees of Freehills, but its premises, practice and profile are quite independent. The principal solicitor reports to Freehills' pro bono committee. Freehills also provides other resources and Mission Australia and the Salvation Army provide premises, telephones and a car as well as training on social welfare issues to Shopfront staff.

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<sup>136</sup> See Adelaide Legal Outreach Service at [www.law.adelaide.edu.au/alos/](http://www.law.adelaide.edu.au/alos/)

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### ***Youthlaw***

The Youth Legal Service ‘Youthlaw’ is a shopfront legal service in central Melbourne which provides advice and casework, advocacy on legal and policy issues and educational programs for young people. BDW works with Youthlaw on many levels, providing a full-time secondment (rotating every 6 months) as well as ongoing financial, administrative, IT and management support.

### ***First Stop Legal and Referral Service***

The First Stop Legal and Referral Service for Young People (First Stop) is in the Australian Capital Territory and provides legal advice, assistance and referrals for people aged 12-25. It was created as a partnership between Clayton Utz, the Legal Aid Commission (LAC) in the ACT, the Youth Coalition of the Australian Capital Territory and the Australian National University Law Students Society. The Service is staffed every afternoon, five days per week, by one Clayton Utz lawyer, one LAC lawyer and two Australian National University law students on the front desk.

### ***Cancer Patients’ Legal Service***

Recently, Baker & Mackenzie and the Peter MacCallum Cancer Foundation set up the Cancer Patients’ Legal Service in Melbourne. The service involves 30 lawyers from Bakers who give assistance to patients of the clinic. Legal issues that arise include superannuation, debts, wills, employment and powers of attorney for patients in palliative care. Before the program commenced, the social workers were finding it difficult to assist patients with their legal issues, some of which arise quite quickly (for example, a power of attorney on a change of medication). The program aims to benefit all involved: social workers participate in training courses on legal issues run by Bakers whose lawyers are in turn coached by the social workers on the effects of cancer and how to deal sensitively with the cancer patients/clients; patients benefit from receiving expert legal assistance provided in a flexible way – at the firm’s offices, in hospital, or at home.

### ***Other specialist projects***

A variation on specialist services occurs where a number of firms and/or barristers become involved in the provision of pro bono assistance to run a sessional specialist clinic or provide specialist legal assistance within, or in partnership with, an existing community organisation. An example of this multi-firm approach is the Temporary Protection Visa (TPV) project, initiated by the TPV Working Group and administered by the Refugee Advice and Casework Service (RACS) in Sydney. The project involves lawyers from a number of firms undertaking training by RACS lawyers, and then participating in a weekly service to assist clients to prepare information, statements and submissions for reapplication to the Department of Immigration and Citizenship for temporary protection visas.



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A more recent RACS initiative is the s.417 (ministerial intervention) clinic set up with funding from the Myer Foundation<sup>137</sup>. In most cases, those providing assistance under the *Migration Act* to asylum seekers must be registered migration agents. However s.417 claims do not have this requirement, so long as the assistance is provided without fee or reward. Responding to a recent and distinct rise in requests for assistance, this RACS coordinated initiative will see pro bono lawyers and students assist RACS clients to prepare s.417 asylum claims.

### **Other specialist pro bono initiatives**

There are many examples of access to justice initiatives that involve pro bono lawyers. Some are specific responses to particular events or issues and may be of limited duration. For example, law firms and community legal organisations have partnered to provide services to people affected by particular events such as the Jabiluka and S-11 protests and the Olympic Games. These initiatives will often be preceded by training, and may involve advice and representation work as well as development of community legal education resources.

An example of a longer-term project is the Criminal Justice Support Network (the CJSN) supported by the Intellectual Disability Rights Service in Sydney<sup>138</sup>. The CJSN project supports people with an intellectual disability who come into contact with the criminal justice system. It is a state wide information and referral service that provides support for people in Sydney and the southern and Hunter regions. During business hours, people in NSW with an intellectual disability who are accused of committing an offence may be able to obtain legal advice from IDRS lawyers or from other services like Legal Aid and LawAccess. However, this assistance is not available after hours, and CJSN provides after-hours assistance with pro bono lawyers participating in an on-call volunteer roster. CJSN provides volunteer lawyers with training.

### **Multi-tiered relationships**

Pro bono assistance can be broader than providing advice, assistance and representation. Firms are increasingly forming partnerships with CLCs and other community organisations, combining the skills, knowledge and resources of CLCs and private firms and barristers. These may be in the form of ‘multi-tiered’ relationships and partnerships where pro bono assistance involves not only direct legal assistance but other kinds of non-legal assistance to facilitate access to justice. Some of these initiatives are documented in the Centre’s paper *Working Together: Multi-tiered pro bono relationships between law firms and community legal organisations*<sup>139</sup>. As the case studies described in *Working Together* make clear, partnerships between

137 See ‘Asylum seekers to get help at last ditch’ in *Law Society Journal* (2006) Vol 44(3) at 18.

138 See [www.idrs.org.au/cjsn/index.html](http://www.idrs.org.au/cjsn/index.html)

139 Also available at [www.nationalprobono.org.au/publications/archive.html](http://www.nationalprobono.org.au/publications/archive.html)

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firms and community organisations create close connections between both parties, leading to greater trust, familiarity, responsiveness and a willingness to extend assistance innovatively and more effectively than one-off referrals.

Examples of the kinds of assistance provided under this ‘model’ include:

- providing legal advice and/or assistance to a community legal service in relation to a particular client matter, including undertaking legal research or drafting documents;
- providing expertise to peak public interest bodies in public policy formulation, for example by researching and drafting law reform submissions and other policy documents;
- using a firm’s media contacts and skills to raise the profile of public interest issues;
- undertaking legal research;
- full-time, part-time or sessional secondments of staff to community legal services and short-term locum secondments;
- preparing or updating community and other legal education materials, such as fact sheets and training materials;
- advising and/or drafting work in relation to internal management issues of community organisations (for example, taxation, incorporation and organisational structures, employment law, tenancy law, intellectual property, privacy or occupational health and safety);
- providing training to community organisations (for example, on changes to tax law or industrial relations issues) or to staff of community legal services (for example, on changes to personal injury law);
- mentoring arrangements between senior law firm staff and solicitors at community legal services;
- support for co-counsel arrangements, for example, an experienced litigator undertaking a discrimination matter at hearing level with the community legal service solicitor as co-counsel;
- encouraging legal staff to volunteer at CLCs or ILOs (for example, by organising rosters of staff volunteers, providing billable hours credit, city parking, travel allowance or taking staff members’ volunteer service into account in performance appraisals);
- working with the service to promote particular law reform proposals, for example, jointly meeting with a government working party; and
- where a firm’s corporate or private clients have an interest in making a philanthropic contribution, a firm can connect those clients with a community organisation.

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In addition, multi-tiered pro bono relationships involve non-legal assistance such as:

- administrative services, including word processing (for example, transcribing tapes for a community legal service) and photocopying (for example, photocopying training manuals, induction manuals, appeal books);
- accounting and bookkeeping services;
- information technology services, including access to precedents and advice on IT issues, developing databases and intranet systems;
- assistance with design and/or publication and printing of hard copy or on-line resources and materials (for example, reports, newsletters, brochures or business cards);
- mail-outs (for example, mailing out a CLC's annual report);
- human resource management advice and assistance (for example, revising personnel manuals);
- secondment of non-legal staff, including on a part-time or occasional basis;
- training for administrative staff;
- access to law firm facilities such as rooms, equipment and catering for meetings, conferences and training seminars. For example, BDW has hosted training seminars by the Disability Discrimination Legal Centre (DDLC) for community sector lawyers. They have also provided video conference facilities for DDLC to reach audiences in regional centres, enabling state-wide participation in the training;
- donations by the firm or individual staff including cash donations to support the service or a particular position in it or for specific activities (for example, holding conferences, paying for conference attendance or for the translation of CLE materials) and donations of equipment (such as computers or furniture);
- access to library resources including the on-line library resources of the firm and research by librarians;
- assistance with fundraising events and conferences (including providing premises and administrative support, hosting events, organising speakers and designing and printing invitations and brochures); and
- assisting in the management of the service through membership of the service's board or management committee.

A number of multi-tiered relationships in NSW have been nominated for the Pro Bono Partnership Award, a category of award within the Law and Justice Foundation of NSW (LJF) Justice Awards. Descriptions of these partnerships can be found on the LJF website at [www.lawfoundation.net.au/justice\\_awards/thisyear.html](http://www.lawfoundation.net.au/justice_awards/thisyear.html).

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Partnerships between law firms and community organisations are an area of increasing focus in pro bono. Many firms have developed and sustained ongoing partnerships with organisations, for example, Gilbert+Tobin has had a relationship with the Kimberley Land Council for over ten years, and Arnold Bloch Leibler with the Yorta Yorta people since 1993. Recognising the scale and diversity of resources available to firms to deliver a variety of services and the increasing evidence of the benefits of partnerships, the Centre is often approached by firms and community legal organisations to help broker relationships.

### **Volunteering**

The ABS 2001 report *Voluntary Work, Australia* estimates that the number of volunteers aged 18 and over in 2000 was 32% of the Australian population and of that, 5% were involved in law/justice/political organisations. The report highlighted the importance of voluntary work as a contribution to national life, especially in meeting community needs and developing social networks and social cohesion.

### **Volunteering at CLCs**

Many lawyers choose to volunteer at advice sessions at community organisations, particularly CLCs which, across Australia, provide referrals, advice and assistance to around 400,000 people, free of charge, each year<sup>140</sup>. CLCs have managed to attract and maintain significant volunteer support and pro bono legal assistance from the private legal profession. The National Association of Community Legal Centres (NACLC) conservatively estimated that in one year, volunteers made an in-kind contribution of over \$21.5 million to CLCs<sup>141</sup>. A rough estimate would suggest that the volunteer contribution to NSW CLCs would be between 25,000 to 75,000 hours per annum<sup>142</sup>, with at least 15,000 additional hours on pro bono secondments.

### **Why people volunteer at CLCs**

An exploratory study of volunteering in NSW CLCs, *My Time is Not a Gift*, found that there is no consensus about what, in general, motivates people to volunteer<sup>143</sup>. However, the study indicates that volunteers in NSW CLCs most frequently reported altruistic reasons for their CLC-based volunteering. The primary motivating factors were the opportunity to help others, working for social justice, a strong agreement

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140 *Community Legal Centres – An Investment in Value, Investing in Community Law* (National Association of Community Legal Centres, August 2003).

141 National Association of Community Legal Centres, Budget Submission to the Commonwealth Government 2004-2007, *Community Legal Centres – An Investment in Value* (2003) at 16.

142 R Melville, *My Time is Not a Gift: An Exploratory Study of NSW Community Legal Centre Volunteers* (Institute of Social Change and Critical Inquiry, University of Wollongong, 2002), and National Pro Bono Resource Centre, Submission to the CLC Review at [www.nationalprobono.org.au/Submissions.html](http://www.nationalprobono.org.au/Submissions.html)

143 R Melville, *My Time is Not a Gift: An Exploratory Study of NSW Community Legal Centre Volunteers* (Institute of Social Change and Critical Inquiry, University of Wollongong, 2002) at 31.

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with the philosophy of the CLC, a sense of fulfillment and the desire to make a difference<sup>144</sup>. ‘Instrumental motives’, such as career development and work experience were also factors, but were not nearly as significant as the ‘social justice’ motives. These sentiments are consistent with data from the Centre’s pilot survey in Queensland (see [www.nationalprobono.org.au](http://www.nationalprobono.org.au)).

### **Factors affecting volunteers’ commitment**

The statistics on volunteering tell us that CLCs are fortunate to be able to attract and retain very skilled and committed professionals to assist them with the core aim of enhancing access to justice. However, respondents’ comments in *My Time is Not a Gift* indicate that this substantial commitment cannot be taken for granted and that it is susceptible to policy and structural changes. Volunteers clearly articulated their identification with CLCs and their commitment to assisting disadvantaged people *and* the organisation<sup>145</sup>: ‘volunteers [in the survey] are committed to the philosophy and current structure of CLCs, their community focus, independence from government, and the ability to be critical and advocate on behalf of people’<sup>146</sup>. It is notable that a significant number of volunteers stated that they would not volunteer in a radically restructured work environment, nor would they volunteer for a privately run or for-profit organisation.

### **Matching volunteers and community organisations?**

There is evidence that some volunteer organisations are engaged in marketing strategies to entice people to volunteer. This may be because of a perception that the overall pool of volunteers is shrinking, forcing agencies to compete more openly and vigorously for their volunteers<sup>147</sup>.

Anecdotally, it appears that many people become volunteers through a word-of-mouth referral from someone who already has an association with a CLC. But there are also those, such as law students, who contact CLCs looking for volunteering opportunities. Responding to queries from potential volunteers takes time.

In response to some of these issues, the Centre and NACLIC have developed a joint project called *CLCvolunteers*. It builds on [www.lawvolunteers.org.au](http://www.lawvolunteers.org.au) developed in Victoria by the law student societies of Monash and Latrobe Universities and has a national database of volunteering opportunities at all CLCs. It is accessible and searchable by the public through a web interface found at [www.clcvolunteers.net.au](http://www.clcvolunteers.net.au). The website also includes answers to ‘Frequently Asked Questions’ about .....

144 *ibid* at 40-41.

145 *ibid* at 44-54, 56, 57.

146 *ibid* at 53; see also Jeff Giddings and Mary Anne Noone, *Local, Regional or Super? Australian Community Legal Centres in the Purchaser-Provider Age*, paper delivered at International Legal Aid Group (Harvard 2003) at 22, 30, available at [ilagnet.org/conference/ilag2003.htm](http://ilagnet.org/conference/ilag2003.htm)

147 *My Time is Not a Gift*, at 15.

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what is involved, what is expected and what is the minimum commitment for a volunteer to make. Each CLC is able to vary its information and status (eg. ‘seeking’ or ‘not seeking’ volunteers) in the database by advising NACLIC of any changes. The website’s reach has been expanded to include volunteering at Indigenous legal organisations, including Family Violence Protection Legal Services nationally. The Centre is currently exploring the possibility of using the website to encourage law student Practical Legal Training placements at CLCs.

### ***Volunteering at other community organisations***

There is little comprehensive information about volunteering by lawyers at community organisations other than CLCs, however, the Centre believes that a significant amount takes place on a regular basis.

In Victoria there are at least 55 Community Information Centres that provide information and referral services and where legal practitioners volunteer to provide free legal advice<sup>148</sup>. Each centre has an individual arrangement with its volunteers regarding the commitment required, however, on average, each lawyer provides advice one afternoon or evening a month. In 2002–2003, there were 16,800 legal inquiries/referrals across the 55 member agencies in Victoria.

There are many undocumented examples of lawyers volunteering at Community Neighbourhood Centres. For example, the Manly Neighbourhood Community Centre in Sydney provides free legal advice at its premises every Thursday night (and occasionally during a Fair Day). The roster is made up of solicitors living or working locally, and they provide initial advice, information and referrals in a range of areas including contracts, Apprehended Violence Orders, driving offences, wills & estate matters and family law. The service advertises through local newspapers, and sometimes liaises with the local Law Society to recruit more volunteer lawyers. The amount of volunteering done in this way is largely unknown.

### ***Legal volunteering elsewhere***

There are other significant and ad hoc examples of legal volunteering, such as volunteering done in association with Law Week in various jurisdictions. For example, during Law Week 2004, the Law Society of Western Australia and the Francis Burt Law Education Centre (Western Australia’s community legal education facility) recruited 50 volunteer lawyers who presented workshops to more than 2500 secondary students on young people’s legal rights.

As discussed earlier in this Report [See 2.4], some solicitors and barristers participate in formal or informal ‘duty lawyer’ schemes at various courts and tribunals, but again, the extent and amount of participation is unknown. It is assumed that there are

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148 See [www.civ.org.au](http://www.civ.org.au)

## HOW IS PRO BONO DELIVERED?

many other examples of volunteer pro bono rosters – and that the Centre’s planned national survey will provide information which may be useful to the profession by providing more details of volunteering opportunities.

Some Law Societies and Bar Associations coordinate Speakers Bureaus as a free community service under which lawyers volunteer to speak to groups or associations on various areas of law.



## 4 Pathways to pro bono

### 4.1 Introduction

So what are the pathways used by people needing pro bono legal assistance? These people are, almost by definition, those who are socially or economically disadvantaged or marginalised and recent Australian research on pathways to justice indicates that when groups of people in this broad category are faced with problems, most do not initially go directly to a lawyer for assistance. Rather, some do nothing, some deal with the issue themselves and some seek advice and assistance from non-legal sources and services<sup>149</sup>.

The means of referral to pro bono assistance are usually by way of:

- personal contacts;
- links between law firms or their staff and non-legal community agencies;
- referral by legal aid agencies, CLCs and ILOs;
- referral by a pro bono referral scheme; and
- referral by other community organisations and agencies.

Apart from the formal pro bono referral schemes, there are schemes which refer matters in a particular area of law or for a particular class of clients. Most of these are part of other projects such as one of the PILCH or court-based projects.

This chapter outlines the work of the main pro bono referral schemes, and presents some data from those schemes. It also provides information collected by the Centre about pro bono assistance available from other sources.

### 4.2 Pro bono referral schemes

The Centre has recently prepared a paper on Australian pro bono referral schemes titled *Pro Bono Referral Schemes in Australia: A History of Professional Association & Law Firm Schemes*<sup>150</sup>. It includes detailed information about the history, structure and activities of those schemes, including PILCH schemes.

Each pro bono referral scheme has different criteria or guidelines by which eligibility or referrals for assistance can be assessed. These are sometimes determined by .....

149 See Christine Coumarelos, Zhigang Wei, Albert Z. Zhou, *Justice Made to Measure, NSW Legal Needs Survey in Disadvantaged Areas* (March 2006), available at [www.lawfoundation.net.au/](http://www.lawfoundation.net.au/)

150 See [www.nationalprobono.org.au/documents/ReferralSchemeshistoryreportfinal.pdf](http://www.nationalprobono.org.au/documents/ReferralSchemeshistoryreportfinal.pdf)

means and merits considerations (for example, some bar and lawyer association schemes apply a means and merits test), and/or jurisdictional considerations (court-based schemes) or public interest criteria (some clearing house schemes).

There are also differences in the way pro bono referral schemes operate. For example, the NSW Law Society's Pro Bono scheme refers most of its matters to smaller firms while the PILCHs tend to refer to larger firms. Some PILCHs are moving away from general referrals and directing their referrals to specific project areas – for example PILCH NSW is referring matters related to its Predatory Lending Project (see PILCH NSW projects). PILCHs also require firms to pay membership fees, while professional schemes do not attract fees. Some PILCHs actively work with affiliated law schools and have ongoing student programs.

The schemes described below do not represent every pro bono referral service, and there are many other schemes of varying formality under which pro bono assistance is provided.

***What proportion of applications are referred through pro bono referral schemes?***

What little quantitative data is known about pro bono output is discussed below. In general, if compared to law firms, pro bono referral scheme numbers are low and a relatively high proportion of applications are not referred. On available data, between 19 and 54 per cent of applications for pro bono assistance through formal pro bono schemes are successfully referred.

While the data is incomplete, it appears that key reasons for non-referral of applications relate to their failure to meet a scheme's particular criteria, guidelines or merits tests. Some referral schemes have noted particular difficulties placing applications from regional, rural and remote areas.

It is unclear what happens to people whose applications are rejected. The difference between application rates and subsequent referral rates is explained by both the merit and means test screening and the fact that, where appropriate, applicants are referred to other services such as legal aid bodies, an ombudsman, another pro bono referral scheme, a CLC or other community organisation. Some schemes note sporadic spikes in referrals.

While there is some regional variation<sup>151</sup>, the law firms with structured pro bono programs receive a very small proportion (some less than 1%) of their pro bono referrals from professional association pro bono schemes and PILCHs.

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<sup>151</sup> For example, the larger law firms with formal pro bono programs accept more referrals from PILCH (Vic) than PILCH (NSW).

## MAPPING PRO BONO IN AUSTRALIA

### ***Professional association schemes***

There are formal pro bono referral schemes operated by legal professional organisations which may have a range of legal assistance schemes advocating and supporting pro bono work. Some professional associations appear to be involved in more informal or ad hoc pro bono referrals.

Formal professional association pro bono referral schemes include:

- Law Society of NSW Pro Bono Scheme
- Bar Association of NSW Legal Assistance Scheme (LARS)
- Law Institute of Victoria Legal Assistance Scheme (LIVLAS)
- Victorian Bar Legal Assistance Scheme (VBLAS)
- Law Society of Western Australia Law Access Public Law Clearing House
- Law Society of ACT Law Clearing House

The following general comments can be made about them:

- eligibility for assistance is assessed under each scheme's own guidelines;
- assistance under the schemes may be provided on a without-fee, reduced fee or conditional fee basis;
- assistance will generally not be provided under the schemes if there is another form of assistance available (such as legal aid, or assistance from a CLC);
- the schemes are discretionary and there is no right to assistance;
- some schemes exclude certain kinds of matters;
- the schemes generally apply a means test and a merits test;
- applicants must complete an application form, provide information about their case, and detailed information and documentation about income, assets and expenditure;
- the schemes do not themselves provide disbursement assistance for matters referred;
- participation in a scheme is likely to result in only a few referrals per year to a firm.

Some law societies also offer first interview schemes where legal advice and information are provided by members of the society, either free or for a small fee. For example, the Law Society of South Australia coordinates an evening advice service in Adelaide. It is staffed by volunteer lawyers who provide preliminary advice and, if necessary, refer clients to a legal aid agency or a private lawyer. A fee of \$22 (or \$10 concession) is charged for twenty minute interviews, by appointment from 5.30pm to 7.30pm Mondays, Wednesdays and Thursdays<sup>152</sup>. It also coordinates

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<sup>152</sup> See Law Society of South Australia at [www.lssa.asn.au/community/services\\_for\\_the\\_community.htm](http://www.lssa.asn.au/community/services_for_the_community.htm)

a First Interview Scheme whereby participating firms provide initial, reduced fee advice. The ACT Law Society operates a free lunchtime legal advice service from solicitors who volunteer their time on a roster basis<sup>153</sup>. Law Access Public Law Clearing House at the Western Australia Law Society administers a Shopfront Lawyer Service that provides 20 minute appointments for general legal advice for a \$25 fee<sup>154</sup>. The Queensland Law Society also runs a '20/20 consultation' service, where some members offer a 20 minute interview for a reduced rate of \$20<sup>155</sup>.

Law Societies sometimes coordinate Speakers Bureaus as a free community service under which solicitors are available to speak on various areas of law to groups or associations.

While the pro bono schemes described below vary in scope and style, most have recorded substantial increases over time in the numbers of enquiries and most receive more applications than they are able to refer. Information about pathways to pro bono for clients varies from scheme to scheme, depending on the information recorded. Brief descriptions of the schemes follow.

### ***Law Society of New South Wales Pro Bono Scheme***<sup>156</sup>

The scheme facilitates pro bono assistance for clients who have been refused Legal Aid, who satisfy the means and merits test and have a matter that falls within the required areas. The most common areas are family, criminal, civil, immigration, probate law and practice. Matters may be declined if they are outside the scheme's guidelines, if they do not pass the means or merits tests or if the matter cannot be placed with a solicitor. The biggest source of referrals is the Legal Aid Commission and the second main source is Community Legal Centres (CLCs). The third source is solicitors themselves.

The Pro Bono Scheme operates state-wide and is staffed by one full time solicitor and one part time administrative assistant. Volunteers from the College of Law undertake their prescribed 15 hour placements at the Scheme.

The scheme maintains a list of approximately 400 firms to whom referrals may be made. It has seen a steady increase in enquiries and referrals over the past three years. Around one-third of matters are referred to its listed firms, the remainder are either outside its means and merits guidelines, or they are simply unable to place the matters. In 2002-2003 it received 345<sup>157</sup> requests for assistance. Of these, 98

153 See [www.lawsocact.asn.au/content/public2/public2.asp](http://www.lawsocact.asn.au/content/public2/public2.asp)

154 See [mail.lawsocietywa.asn.au/web/LawAccess/FirstPage.htm#shopfront](mailto:mail.lawsocietywa.asn.au/web/LawAccess/FirstPage.htm#shopfront)

155 See [www.qls.com.au/default.aspx?pid=213](http://www.qls.com.au/default.aspx?pid=213)

156 See [www.lawsociety.com.au/page.asp?partID=6744](http://www.lawsociety.com.au/page.asp?partID=6744)

157 Civil (107 matters); family (62); commercial (7); criminal (69); immigration (44); employment (20); probate (12); other (eg. administrative law) (24). The largest source of applications came by way of referral from the Legal Aid Commission, community legal centres and the third largest source of referrals were solicitors themselves.

## MAPPING PRO BONO IN AUSTRALIA

matters were referred for pro bono assistance. In the 2003-2004 year, there were 385 requests of which 158 were referred and in 2004-2005 there were 544 requests with 217 being referred. In the 2005-2006 year, 523 requests were made and 175 were referred.

### NSW Law Society referrals

Year	Enquiries/Applications	Referrals	% applications referred
2002-2003	345	98	28%
2003-2004	385	158	41%
2004-2005	544	217	39%
2005-2006	523	175	33%

Recognising the high unmet need for pro bono assistance in areas outside metropolitan Sydney, the Scheme is actively recruiting lawyers in regional areas to join its panel of pro bono solicitors<sup>158</sup>.

The Law Society administers a disbursement fund under which legal practitioners may receive reimbursement, either wholly or in part, of disbursements expended upon pro bono work done through the Law Society, the NSW Bar Association and PILCH (NSW) pro bono schemes.

### ***New South Wales Bar Association Legal Assistance Referral Scheme (LARS)***<sup>159</sup>

LARS aims to provide legal assistance for free or at reduced rates to people who would otherwise not be able to obtain legal assistance without suffering severe financial hardship. Since its inception in 1994 until 2005, barristers contributed approximately 25,000 work hours<sup>160</sup>. There are criteria for eligibility and personal injury, medical negligence, neighbourhood disputes and Apprehended Violence Orders are excluded. LARS does not consider matters that have been refused assistance by other providers on the basis of lack of merit. The income threshold for applicants is gross income not exceeding \$1000 per week.

In the 2004–2005 period, about 25% of matters referred by LARS to barristers were directly from the public, about 15% from Community Legal Centres, another 15% from instructing solicitors, 13% from the Law Society of NSW's Pro Bono Scheme, about 9% from a Judge (presumably under a Court pro bono referral scheme) and 7% and 6% from a member of the Bar and LawAccess respectively. The rest of the referrals came through Legal Aid, Registrars, welfare/community groups, non-instructing solicitors, pro bono directors of large firms and the Department of Public Prosecutions<sup>161</sup>.

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158 See Law Society of New South Wales *Annual Report 2005* at 17, at [www.lawsociety.com.au/page.asp?partID=17427](http://www.lawsociety.com.au/page.asp?partID=17427)

159 See [www.nswbar.asn.au/Public/LegalAssistance/content\\_legass.htm](http://www.nswbar.asn.au/Public/LegalAssistance/content_legass.htm)

160 NSW Bar Association Annual Report 2005, see [www.nswbar.asn.au/database/bar\\_brief/documents/AR05\\_web.pdf](http://www.nswbar.asn.au/database/bar_brief/documents/AR05_web.pdf)

161 NSW Bar Association Annual Report 2005, see [www.nswbar.asn.au/database/bar\\_brief/documents/AR05\\_web.pdf](http://www.nswbar.asn.au/database/bar_brief/documents/AR05_web.pdf)

This scheme is not solely a pro bono scheme. It uses four types of costs agreements, only the third of which would meet the definition of pro bono used in this report. The four are (i) a speculative fees agreement (the barrister is only paid if the case is successful), (ii) a reduced fee agreement (with the cost negotiated with the Scheme manager), (iii) no fee regardless of outcome or (iv) the barrister may simply agree to take on the case at his/her normal rate of charging. Where a solicitor as well as a barrister is required, a referral is often made to the NSW Law Society Pro Bono Scheme.

The manager and staff of LARS also manage the duty barrister schemes operating at the Local and District Courts at the Downing Centre and the Australian Industrial Relations Commission. Barristers are rostered each day at the courts. Barristers also support pro bono schemes in the Federal Court, Federal Magistrate’s Court, Supreme Court, Land & Environment Court and District Court.

**NSW Bar Association referrals**

Year	Enquiries/Applications	Referrals	% applications referred
2002-2003	358	189	52%
2003-2004	258	119	46%
2004-2005	278	135	48%
2005-2006	253	115	45%

***Law Institute of Victoria Legal Assistance Scheme (LIVLAS)***

The scheme is administered by PILCH Victoria and facilitates community access to pro bono legal assistance from the private legal profession. Eligibility for assistance under LIVLAS depends on legal merit, a means test and the client’s ineligibility for legal aid. If the matter meets these criteria, LIVLAS may be able to refer it to a solicitor to act pro bono.

In the 2003-2004 year, LIVLAS received 595 inquiries<sup>162</sup>, the majority of which were from individuals, and made 116 successful referrals to solicitors. There were then more than 540 Victorian solicitors in small suburban, regional and rural practices as well as larger city firms, who had indicated a willingness to consider referrals. For the 2004-2005 year there were 723 enquiries with 139 being referred to solicitors<sup>163</sup> and in 2005-2006 there were 829 enquiries with 135 being referred.

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 162 PILCH (Vic) Annual Report 2004  
 163 PILCH (Vic) Annual Report 2005

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### LIVLAS referrals

Year	Enquiries/Applications	Referrals	% applications referred
2002-2003	407	91	22%
2003-2004	595	116	19%
2004-2005	723	139	19%
2005-2006	829	135	16%

### ***Victorian Bar Legal Assistance Scheme (VBLAS)***

This scheme is also administered by PILCH Victoria. As well as meeting the criteria for the LIVLAS scheme (above), the additional criterion of the ‘interests of the administration of justice’ is considered. Where a matter meets these criteria, VBLAS may be able to refer the matter to a barrister who will act pro bono. In the 2003-04 year, VBLAS received 284 requests for legal assistance<sup>164</sup> and made 154 successful referrals. This was more than double the 91 referrals in 2002-2003. The majority of requests were from individuals and while the scheme covers all areas of law, the greatest number of requests involved refugee matters. In 2004-2005, VBLAS dealt with 374 enquiries and had referred 184 to barristers participating in the scheme<sup>165</sup> while in 2005-2006 this rose to 426 enquiries with 215 being referred. Of these, 70% related to migration matters<sup>166</sup>.

### VBLAS referrals

Year	Enquiries/Applications	Referrals	% applications referred
2002-2003	281	91	32%
2003-2004	284	154	54%
2004-2005	374	184	49%
2005-2006	426	215	50%

### ***Law Society of Western Australia Law Access Public Interest Law Clearing House***

The Law Access service was established in October 1992 with funding from the Public Purposes Trust and the Law Society of Western Australia to coordinate the giving of free and reduced fee legal representation. It provides a wide range of referrals for advice, documentation, and representation in civil court actions, criminal trials, appeals and pleas in mitigation, in negotiations by not-for-profit organisations with government, in Administrative Appeals Tribunal cases and for refugees in detention. Assistance includes general advice, preparation of legal documentation, mediation of disputes and perusal of agreements.

The scheme is staffed by one lawyer, an assistant and law students who assist with

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164 PILCH (Vic) Annual Report 2004

165 PILCH (Vic) Annual Report 2005

166 PILCH (Vic) Annual Report 2006



merits assessments. The students apply a standard checklist and also undertake research on pro bono matters after they have been referred to pro bono solicitors or counsel. If the criteria<sup>167</sup> are met, the matter is circulated to listed Law Society members. To facilitate easy referral, the service maintains a register of legal practices and their areas of practice.

Applications are encouraged from individuals who are unable to afford legal services, are unable to obtain Legal Aid and who have a genuine legal problem that requires greater assistance than that which can be provided by an initial solicitor or CLC consultation. Referrals generally come from Legal Aid Commissions, courts and tribunals, various CLCs and community organisations.

No data has been available from the scheme.

**ACT Pro Bono Clearing House**

The ACT Law Society launched the ACT Pro Bono Clearing House (PBCH) on 15 November 2004. As at September 2005, it had 27 barristers and solicitors willing to participate on the PBCH assessment panel and 22 firms willing to accept referrals. The PBCH will not deal with matters if it is thought that assistance should be provided by the ACT Legal Aid Office.

**ACT Pro Bono Clearing House referrals**

Year	Enquiries/Applications	Referrals	% applications referred
2005 Jan-Dec	54	25	46%
2006 Jan-Nov	54	25	46%

The main areas of referrals were in crime and family law, followed by tenancy, administrative, immigration and employment law matters.

**State-based PILCH schemes**

Public Interest Law Clearing Houses (PILCHs) have been established in New South Wales, Queensland and Victoria. Most PILCH operations are substantially funded by fees paid by members (full or associate members) who are predominantly law firms but may also include barristers, corporate and government legal units, accounting firms, law schools and community legal centres. Firm fees are generally calculated on a per-partner basis<sup>168</sup>. PILCH members may receive a small number of referrals each year and are under no obligation to accept them. Referrals include matters requiring the provision of legal advice or transactional work as well as litigation. Acceptance is usually based on member interests, expertise and available

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 167 See [www.lawsocietywa.asn.au/access.html](http://www.lawsocietywa.asn.au/access.html)

168 The ACT Pro Bono Clearing House does not involve membership fees; practitioners may become members by participating in assessment of matters, and by undertaking work referred by the Clearing House.

## MAPPING PRO BONO IN AUSTRALIA

resources. Members also directly assist PILCHs by providing short-term secondees to PILCHs, as well as providing financial and in-kind assistance.

In addition to advice and representation of individuals, a large proportion of PILCH referrals are requests by not-for-profit groups for non-contentious, transactional advice. The kind of transactional work that PILCH members undertake is varied and includes advising community organisations and peak bodies on tax exemptions, insurance schemes and liability issues and assisting them with matters relating to their constitutions and management structures. Clearing houses also facilitate administrative support for community organisations, for example by members assisting peak bodies to catalogue their library resources.

Some PILCHs coordinate legal clinics such as the Homeless Persons' Legal Clinics operating in Brisbane and Melbourne and the Homeless Persons' Legal Service operating through PILCH in Sydney. Others coordinate specific clinics, such as the consumer law advice clinic at QPILCH<sup>169</sup>. Current projects, clinics and other activities of the respective PILCHs are discussed below.

### **PILCH NSW**<sup>170</sup>

PILCH NSW commenced in 1992 as an initiative of the Public Interest Advocacy Centre (PIAC), the Law Society of NSW, the NSW Bar Association and private law firms. PILCH NSW functions as an assessment and referral service for legal matters in the public interest. It has over seventy law firm and barrister members and also has links to associate members, including mediators and accountancy firms.

Requests are evaluated against eligibility criteria and eligible requests are referred to members to act on either a no-charge or reduced fee basis. Eligibility requires that the applicant be a non-profit organisation or an individual ineligible to obtain legal aid, of insufficient means to afford the requisite legal services. The matter must also be of public interest in that it affects a significant number of people, raises matters of broad public concern and requires a legal remedy or other legal assistance.

PILCH NSW services include advice, research, legal representation, submission drafting and alternative dispute resolution. PILCH NSW staff generally attend the first meeting between the client and the PILCH NSW lawyer but then, the relationship is a traditional lawyer-client one. Typically no legal fees are charged, however applicants will often be asked to pay for, or contribute towards, disbursements. The scheme is staffed by a Manager, an administrative assistant and a solicitor (typically on a pro bono secondment from a member law firm).

169 See [www.qpilch.org.au/01\\_cms/details.asp?ID=8](http://www.qpilch.org.au/01_cms/details.asp?ID=8)

170 See [www.piac.asn.au/legal/pilchhelp.html](http://www.piac.asn.au/legal/pilchhelp.html)

Application and referral statistics since 2001 are as follows<sup>171</sup>:

**PILCH NSW referrals**

Year	Enquiries/Applications	Referrals	% applications referred
2001-2002	212	60	28%
2002-2003	247	90	36%
2003-2004	260	88	34%
2004-2005	247	77	31%
2005-2006	251	109	39%

**PILCH NSW projects**

PILCH NSW also coordinates and provides support for a number of projects including the Homeless Persons’ Legal Service, described above. Some of PILCH NSW’s other projects are described below.

**Children in Detention Advocacy Project (CIDnAP)**

The CIDnAP is a joint project of PILCH NSW, the Legal Aid Commission of NSW (LACNSW) and PIAC. It aims to highlight and address systemic deficiencies in criminal justice system administration in NSW which result in the unlawful detention of children. The project was initiated by LACNSW in 2004 following the identification by their Children’s Legal Service of a number of civil cases involving allegations of minors being arrested and detained on warrants later found to be deficient. There were also problems with bail conditions requiring minors to reside at places directed by government departments.

Project participants determined that the systemic deficiencies should be addressed not only through litigation but also through policy and advocacy work. CIDnAP is co-coordinated by PIAC. PILCH NSW members support the project through assisting with individual referrals and policy work. The first stage of the project involved training lawyers on substantive litigation issues, the legal aid application process, the policy and advocacy work of the project and information about working effectively with the client group<sup>172</sup>.

**PILCH PIAC Stolen Generation/Stolen Wages Project**

Part of its Indigenous Justice Project, PIAC’s Stolen Generation Project has involved the cross-cultural training of lawyers, policy and submission work and advice on possible actions to obtain redress. It developed from a 1997 PIAC publication, *Providing Reparations: A Brief Options Paper*, which argued for the establishment of a Stolen Generations Reparations Tribunal. The focus of the proposal was that in dealing with issues arising from forcible removal, those removed would not

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 171 See PILCH NSW Annual Reports 2001–2006.  
 172 For more information about CIDnAP, see *PIAC Annual Report 2004–2005* at 25, 29.

## MAPPING PRO BONO IN AUSTRALIA

necessarily have their harm redressed within the confines of the traditional legal process. From mid 1999, PIAC continued to work on the proposal, establishing a reference group to provide a range of information and expertise<sup>173</sup>. PIAC's work with Indigenous communities led to the investigation of claims by clients who were denied access to wages, allowances and pensions held on trust by the Aborigines Welfare Board (AWB) and subsequently the NSW Government. Following extensive lobbying, the Aboriginal Trust Fund Repayment Scheme was established in 2005 and is now accepting claims from direct living claimants. PIAC has conducted outreach sessions in regional and remote NSW to provide information to communities about making claims for stolen wages. It has recently collaborated with four PILCH member firms (Allens Arthur Robinson, Gilbert+Tobin, Freehills and Ebsworth & Ebsworth) to establish a referral scheme which will enable solicitors from these firms to provide legal assistance to stolen wages claimants on a pro bono basis. Solicitors from each of these firms have participated in an information session and in cultural awareness training presented in conjunction with Tranby Aboriginal College<sup>174</sup>.

PIAC's Indigenous Justice Project is assisted by funding from Allens Arthur Robinson who pay the salary of PIAC's full-time Indigenous solicitor and for other associated costs of the Project<sup>175</sup>.

### **PILCH PIAC Predatory Lending Project (PLP)**

PLP is a joint project of PILCH (NSW), the Consumer Credit Legal Centre and the Legal Aid Commission of NSW. Launched in early 2006, the project has adopted a casework and law reform strategy to achieve greater protection for disadvantaged consumers against the practice of predatory mortgage lending.

### **QPILCH**

QPILCH was established in 2001 by a Queensland committee which formed to develop a PILCH, based on the NSW model. It was launched on 19 April 2002 and is a member of the Australian PILCH network. QPILCH was an initiative of several private law firms, community legal services, the Queensland Bar Association, Legal Aid Queensland and Griffith University<sup>176</sup>. QPILCH's operations are funded by membership fees, grants and donations.

Application and referral statistics since 2001 are as follows<sup>177</sup>:

173 PIAC Submission to Senate Legal and Constitutional References Committee Inquiry into the Stolen Generation: [beta.austlii.edu.au/au/other/IndigLRes/2000/1/2.html#Heading13](http://beta.austlii.edu.au/au/other/IndigLRes/2000/1/2.html#Heading13)

174 See PIAC e-bulletin 165 at [www.piac.asn.au/news/bulletins/](http://www.piac.asn.au/news/bulletins/)

175 For more information on PIAC's Indigenous Justice Project see [www.piac.asn.au/system/indig.html](http://www.piac.asn.au/system/indig.html)

176 Exchange of Christmas Greetings and Presentation of Senior Council, see [www.courts.qld.gov.au/publications/articles/speeches/2001/dj121201.pdf](http://www.courts.qld.gov.au/publications/articles/speeches/2001/dj121201.pdf) at December 2001.

177 QPILCH Annual Reports 2002–2006.

**QPILCH referrals**

Year	Enquiries/Applications	Referrals	% applications referred
2001-2002	50	17	34%
2002-2003	111	40	36%
2003-2004	176	46	26%
2004-2005	197	64	32%
2005-2006	200	77	38%

QPILCH also coordinates clinics, training programs, workshops and seminars to support its activities and projects. Some of QPILCH's projects are described below.

**QPILCH projects**

**Homeless Persons' Legal Clinic<sup>178</sup>**

The Homeless Persons' Legal Clinic coordinated by QPILCH provides free legal advice and assistance at emergency accommodation centres and welfare agencies across Brisbane to people who are homeless or at risk of homelessness. Assistance is provided by QPILCH lawyer members who have undertaken training in areas of community law. This model of service delivery is described in more detail above [See 3.2].

**Consumer Law Advice Clinic<sup>179</sup>**

The Consumer Law Advice Clinic was established in 2004 to provide a free advice and referral service in consumer and financial services matters to low income and disadvantaged people. The clinic is a joint project of QPILCH and the TC Beirne School of Law at the University of Queensland, with assistance from lawyers seconded from Clayton Utz and, more recently, Blake Dawson Waldron.

The services provided by the Clinic include: telephone preventative advice (ie. advising on how to avoid a potential legal problem); advice in response to telephone enquiries; minor assistance that might lead to an early resolution of a problem, including assistance in letter writing and completion of forms; assessment of legal merit; and referral in more complex public interest matters to QPILCH member firms. Selected students from the School of Law attend the QPILCH office in the city to provide telephone advice and assistance to consumers. Their casework is supervised by the seconded pro bono solicitor. Assistance is given for problems involving: consumer credit, including personal loans, housing loans, linked credit and credit cards; debt collection, including repossessions, bankruptcy, insurance, guarantees, unsolicited goods, mortgage brokers, debtor harassment and financial advisers.

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 178 See [www.qpilch.org.au/01\\_cms/details.asp?ID=7](http://www.qpilch.org.au/01_cms/details.asp?ID=7)

179 See [www.qpilch.org.au/01\\_cms/details.asp?ID=8](http://www.qpilch.org.au/01_cms/details.asp?ID=8)

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### **Administrative Law Clinic**<sup>180</sup>

The Administrative Law Clinic is a joint project of QPILCH and Bond University. It provides free legal services to disadvantaged people seeking assistance in challenging government decisions and is primarily staffed by senior law students under the supervision of an experienced practitioner.

The clinic provides advice and minor assistance in administrative law matters including judicial review of government decisions and matters before the Administrative Appeals Tribunal. The clinic may also give assistance in relation to internal review of government decisions, freedom of information matters, matters before the Social Security Appeals Tribunal, the Guardian and Administration Tribunal and other tribunals.

### **Refugee and Immigration Legal Support Project (RAILS)**<sup>181</sup>

The RAILS project was a partnership between QPILCH and the South Brisbane Immigration and Community Legal Service (SBICLS). The primary goal of the project was to increase the availability of free legal services in Brisbane to refugees on Temporary Protection Visas, and asylum seekers generally. RAILS achieved this goal by coordinating and facilitating an increased provision of pro bono legal services to this target group by private practitioners. The RAILS project came to an end in December 2005. However, many of the volunteer lawyers with the RAILS Project have stayed as volunteers with SBICLS on an ongoing basis. This systemically increases that service's capacity for pro bono legal assistance and enables the service's volunteer lawyers to assist, for example, with applications for family reunion from recently arrived refugees.

### **Public Interest Law Clearing House (Vic) Inc (PILCH Vic)**

PILCH Vic was established in 1994 as a project of the Consumer Law Centre Victoria, supported by the Fitzroy Legal Service, the Victorian Bar Council and a number of Melbourne law firms. It is now a not-for-profit legal centre whose mission is to further the public interest, improve access to justice and protect human rights by providing pro bono legal services and by undertaking law reform, policy work and legal education. It is fully funded by fees paid by its members who include law firms, the Victoria Bar Council, four university law schools, community legal centres and an accounting firm. PILCH is staffed by two Co-Executive Directors (part-time), a full time Coordinator and 2 secondee solicitors.

PILCH Vic's core business is to receive and assess applications for legal assistance from the public and refer them to pro bono solicitors and barristers through four pro bono Schemes: the Public Interest Scheme, the Law Institute of Victoria Legal

180 See [www.qpilch.org.au/01\\_cms/details.asp?ID=9](http://www.qpilch.org.au/01_cms/details.asp?ID=9)

181 See [www.qpilch.org.au/01\\_cms/details.asp?ID=18](http://www.qpilch.org.au/01_cms/details.asp?ID=18)

Assistance Scheme (LIVLAS), the Victorian Bar Legal Assistance Scheme (VBLAS) and the Homeless Persons’ Legal Clinic (HPLC). In January 2006, in conjunction with Liberty Victoria, PILCH established the Human Rights Law Resource Centre (HRLRC) (see below).

The schemes provide assistance to applicants whose matters have legal merit, who are unable to obtain legal assistance from an alternative source (such as Legal Aid or a CLC), and who are experiencing financial hardship.

The Public Interest Scheme also aims to identify and support non-profit organisations with public interest objectives that require legal assistance, and individuals whose matters are of broad public concern, or are of significance to disadvantaged or marginalised groups.

Application and referral statistics since 2001 are as follows<sup>182</sup>:

**PILCH VIC referrals**

Year	Enquiries/Applications	Referrals	% Referred
2001-2002	483	143	30%
2002-2003	423	144	35%
2003-2004	473	150	31%
2004-2005	543	186	34%
2005-2006	598	187	31%

During 2004-05 period, 53% of the referrals were for not-for-profit organisations, 35% were for individuals and 12% were for groups.

PILCH undertakes a range of policy and advocacy submissions and training programs. It hosts events and coordinates student programs. PILCH has made submissions to the Victorian Government in relation to its legal services tender, and to the Senate Inquiry into Legal Aid & Access to Justice Migration Litigation Review, the Review of Legal Services Directions, the Federal Justice Civil Strategy Paper and the Migration Amendment (Judicial Review) Bill 2004<sup>183</sup>. PILCH also has an active policy and law reform agenda relating to the work of the Homeless Persons’ Legal Clinic<sup>184</sup>. It has lawyers and administrators on secondment from PILCH members.

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 182 See PILCH (Vic) Annual Reports 2001–2006

183 See Publications, at [www.pilch.org.au](http://www.pilch.org.au)

184 See Publications, at [www.pilch.org.au](http://www.pilch.org.au)



## MAPPING PRO BONO IN AUSTRALIA

### ***PILCH Vic projects***

#### **Homeless Persons' Legal Clinic**

PILCH Vic supports the Homeless Persons' Legal Clinic described above at 3.2.

#### **Human Rights Law Resource Centre (HRLRC)**

HRLRC is a joint initiative of PILCH Vic and Liberty Victoria. Through the practice of law, the HRLRC aims to promote human rights in Victoria and Australia, particularly the human rights of people that are disadvantaged or living in poverty. The HRLRC also aims to support and enhance the capacity of the legal profession, judiciary, government and community sector to develop Australian law and policy consistently with international human rights standards.

The HRLRC seeks to achieve these aims by supporting, conducting, coordinating, resourcing, facilitating and enhancing the provision of legal services, litigation, education, training, research and advocacy regarding human rights. The HRLRC undertakes these activities through partnerships and collaboration with the community legal sector and legal aid, human rights organisations, pro bono lawyers, legal professional associations and university law schools<sup>185</sup>.

#### **PILCH Not- for-Profit Project**

PILCH is conducting a special project to provide further pro bono legal assistance and legal training to not-for-profit (NFP) organisations in Victoria. NFPs with public interest objectives are eligible for pro bono legal assistance and currently account for more than half the matters referred each year by the scheme. The advice generally requested by NFPs covers a wide range of legal issues such as advice on legal structure, constitutions and reporting, taxation (including eligibility for endorsement as Income Tax exempt charities and deductible gift recipients), employment and industrial relations (for example, employment contracts and policies for paid and unpaid volunteer staff), intellectual property and information technology, defamation, media and entertainment (including press releases, submissions and advocacy), property, building and tenancies (renewal and negotiation of leases) and insurance (exposure to liability for workplace activities, fundraising and public events).

PILCH Vic has the capacity to refer NFPs to law firms and barristers who have expertise in these and other areas of law. It also provides seminars and resources for NFPs.

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185 See [www.pilch.org.au/](http://www.pilch.org.au/)

***Court based pro bono referral schemes***

The rise in the numbers of self-represented litigants before the Courts and Tribunals is now well-documented<sup>186</sup>. Self-represented litigants are not a homogenous group, and may appear before courts and tribunals for a variety of reasons including inability to afford professional representation, lack of availability of legal aid, or choice. The link between self-representation and the restricted availability of legal aid funding<sup>187</sup> and its effects on access to justice appears to be clear<sup>188</sup>.

Noting that the rise in numbers of self-represented litigants is clearly impacting on the administration of justice and their operations, courts and tribunals are individually and collectively considering strategies to secure legal representation for those otherwise unable to get assistance. Increased funding of duty lawyer schemes is sometimes recommended as the optimal approach to addressing this serious access to justice issue.

In a recent initiative, the Victorian Court of Appeal has employed a self-represented litigants’ coordinator to act as a contact point, explain procedures, and most importantly, help manage expectations of self-represented litigants before the court<sup>189</sup>.

Other strategies have included the expansion of ‘unbundled legal services’ (on a pro bono or reduced fee basis)<sup>190</sup>, court-sponsored, government-funded legal advice rosters<sup>191</sup> as well as the development of self-represented litigants ‘Management Plans’<sup>192</sup> and various court and tribunal pro bono assistance schemes.

Models of court-based pro bono referral range from formal pro bono referral schemes (for example, the Federal Court Legal Assistance Scheme established under Order 80 of the Federal Court Rules) to informal schemes, such as the Administrative Appeals Tribunal agreement where four migration solicitors assist self-represented litigants in migration matters.

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 186 See references to observations from reports and committees noted in the Australian Institute of Judicial Administration Report, *Forum on Self-Represented Litigants* (2004), available at [www.aija.org.au/online/SRLForumReport.pdf](http://www.aija.org.au/online/SRLForumReport.pdf) p 1 and references in footnotes 1–4. See also the Senate Report 2004, at 181–183 at [www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/contents.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/contents.htm)

187 See Senate Report 2004, at 181–183

188 See Senate Report 2004, at 185–195.

189 See Australian Financial Review, 16 June 2006 at 57.

190 See Senate Report 2004, at 201–202; see also AIJA Report, *Litigants in Person Management Plans: Issues for Courts and Tribunals* available at [www.aija.org.au/online/LIPREP1.pdf](http://www.aija.org.au/online/LIPREP1.pdf) at 11.

191 See also Law Reform Commission of Western Australia, Review of the Criminal and Civil Justice System, (1999) available at [www.lrc.justice.wa.gov.au/RevCCJS-p92/finalreport/finalreportpdf/ch18selfreps.pdf](http://www.lrc.justice.wa.gov.au/RevCCJS-p92/finalreport/finalreportpdf/ch18selfreps.pdf) Recommendation 208.

192 For example, the Federal Court of Australia adopted a Self-Represented Litigants Management Plan in 2002 – see Federal Court of Australia *2002–2003 Annual Report* at 36–37; see also Department of the Attorney General, Western Australia, *Self-Represented Persons in Western Australian Courts and Tribunals Management Plan* (May 2006).

## MAPPING PRO BONO IN AUSTRALIA

Under the formal schemes, referrals are generally made by the court to a court Registrar who refers a self-represented litigant to a barrister or solicitor/firm. Court registries maintain lists of lawyers who have agreed to participate in the schemes. There is no stated means or merits test. However, the court may take into account the litigant's means and capacity to obtain legal assistance, the nature and complexity of the proceedings and any other matter it considers appropriate. A referral is not intended to be a substitute for legal aid, nor is a referral a guarantee of representation<sup>193</sup> or an indication that the court has formed an opinion on the merits of a case.

The issue of self-represented litigants was addressed in a 2001 Report from the Australian Institute of Judicial Administration (AIJA)<sup>194</sup>. The Report, *Litigants in Person Management Plans: Issues for Courts and Tribunals*, noted that strategies require collaboration and cooperation with the legal profession, including law firms and practitioners, the Bar, legal aid, government departments in the justice sector and advice agencies<sup>195</sup>. The AIJA subsequently organised a forum on self-represented litigants, attended by representatives of Courts and Tribunals across Australia, as well as observers including the Centre and legal aid representatives. The Report of the forum noted that most existing Court and Tribunal based pro bono schemes are fairly limited and there is little in the way of evaluation<sup>196</sup>.

Brief descriptions of each court-based pro bono scheme follow.

### **Federal Court Legal Assistance Scheme**

This Scheme is established under Order 80 (O 80) of the Federal Court Rules. It enables judges to refer matters for legal assistance in cases where they consider that legal representation or advice is needed and appropriate in the interests of the administration of justice. The Court may refer a self-represented litigant to a legal practitioner (usually a barrister) on the Court's Pro Bono Panel for various kinds and levels of assistance. The panel is maintained by Registrars of the Court.

A number of guidelines apply to the O 80 scheme including:

- it does not cover litigants who may be eligible for Legal Aid;
- it only covers litigants who are already parties to Federal Court proceedings;
- Judges may only make a referral when it is in the interests of justice to do so;

193 A referral under the Federal Court of Australia's Order 80 Pro Bono Referral Scheme only 'imposes upon the Registrar an obligation to attempt to arrange for the legal assistance mentioned in the certificate.' – *Taylor v Minister for Immigration & Multicultural & Indigenous Affairs* [2005] FCA 319 at para [12].

194 See AIJA Report, *Litigants in Person Management Plans: Issues for Courts and Tribunals* available at [www.aija.org.au/online/LIPREP1.pdf](http://www.aija.org.au/online/LIPREP1.pdf)

195 *ibid* at 11-12.

196 See AIJA Report, *Forum on Self-Represented Litigants* (2004), available at [www.aija.org.au/online/SRLForumReport.pdf](http://www.aija.org.au/online/SRLForumReport.pdf) at 19.

- the Judge will specify the scope of the referral eg. for written advice, to draft a particular document or appear at a hearing. There is no obligation for a barrister to continue to act once the particular task is completed;
- if a Judge makes a referral, a Registrar of the Court will attempt to find a barrister and if successful, will provide copies of Court documents to the barrister.

Barristers are not obliged to accept the referral. Barristers accepting referral will not charge any professional fee but if an order for costs is made in favour of a litigant, they are entitled to recover fees and disbursements that another party is required to pay under the costs order [Rule 9(2)]. Under Rule 10, the legal practitioner who provides assistance may request the litigant to pay any disbursements reasonably incurred.

There has not yet been any evaluation of the scheme. Anecdotally, it appears that the Order 80 Scheme is applied differently in different Registries<sup>197</sup>. It is also noted that in less populous states, the ability of the profession to respond to the Order 80 scheme is limited<sup>198</sup>.

A total of 1032 referrals have been made under the Order 80 Scheme since its commencement<sup>199</sup>. Of these, a little over 80% have been in migration matters; and 54% of all referrals have been made in Western Australia. The majority of referrals are to barristers. With the recent limitation on accessibility of judicial review applications, the number of referrals in migration matters has significantly decreased. On available data, it appears that the number of Order 80 referrals in WA were 149 in 2003, 86 in 2004 and 89 in 2005.

**Federal Magistrates' Court Legal Assistance Scheme**

The Federal Magistrates' Court (the FMC) manages and coordinates assistance to many self-represented litigants involved in general federal law cases through the Court administered pro bono scheme, external pro-bono schemes, and duty lawyer services. The operation of the scheme varies in each State or Territory by reference to the FMC's objective of ensuring that its program complements existing methods of assistance.

Under Part 12 of the FMC Rules, where it is considered that representation is appropriate in the interests in the administration of justice, the court can refer

197 For example, 13% of total referrals have been in NSW, 28% in Victoria and 54% in Western Australia (source: data provided to the Centre by the Federal Court of Australia). See also, Federal Court of Australia, *Self-Represented Litigants in the Federal Court – A Management Plan*.

198 Note the exception of WA where over half the referrals have been made. South Australia only accounts for 2% of referrals, Queensland 3%, ACT less than 1%.

199 Based on figures to 31 December 2005. The Order 80 Scheme commenced in Victoria in 1998, and in 1999 in other states.

## MAPPING PRO BONO IN AUSTRALIA

a party to a registrar for referral to a lawyer on the pro bono panel. Registrars in each registry of the court maintain lists of lawyers who agree to participate in the scheme.

The majority of applications for pro bono assistance were received in Melbourne and Sydney. During 2004–05, ten referrals, all of which were for migration matters, were placed under the FMC administered pro bono scheme in Melbourne. The number of referrals received under the Sydney pro bono scheme was 12. Of the 12 referrals, nine were for migration matters and three for human rights matters<sup>200</sup>.

A further scheme has been operating in the Sydney Registry since July 2001. The ‘Sydney pilot’ consists of a panel of solicitors representing four of the larger firms. They can provide initial advice and, in appropriate cases, representation at the hearing. After consultation with the litigant, the federal magistrate in whose docket the matter lies, can refer it to the panel. A formal referral under Part 12 is made where the assistance extends to representation at a hearing. The pilot scheme is now permanent, with the number of firms increased to 10 and a special migration panel established. A similar scheme now operates in the Adelaide Registry of the FMC.

From November 2004 to December 2005, the FMC managed a roster of pro bono solicitors who appeared for self-represented asylum seekers in cases where the Minister for Immigration and Multicultural Affairs sought to have certain of their applications struck out. Pro bono solicitors appeared in the ‘non-compliance list’ to assist the court and the applicant. The scheme worked well to meet the particular needs at the time.

### **Administrative Appeals Tribunal (AAT)**

The Sydney Registry of the AAT had an informal pro bono scheme where a roster of solicitors assisted self-represented litigants. Now, duty solicitors from the Legal Aid Commission provide assistance at the AAT on a regular basis. However, in Sydney on the occasions that there are expedited visa application hearings (approximately once a month) and the applicant is in detention, the AAT will facilitate a pro bono referral through the Law Society or Bar Association pro bono schemes. Additionally, there are two private practice migration solicitors who sometimes provide free assistance to self-represented litigants prior to the initial conference at the AAT, before a hearing is scheduled.

### **Supreme Court of New South Wales Legal Assistance Scheme**

Referrals for legal assistance are made by the Court or Judge pursuant to Part 66A of the Supreme Court Rules NSW. Rule 4(1) provides that ‘The Court may, if it is in the interests of the administration of justice’, refer a litigant to the registrar for

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200 See Federal Magistrates’ Court Annual Report 2004-05, [www.fmc.gov.au/pubs/docs/04-05pt3.pdf](http://www.fmc.gov.au/pubs/docs/04-05pt3.pdf) at 39.

referral to a barrister or solicitor on the Pro Bono Panel for legal assistance. Legal assistance can be for the hearing or for the provision of advice, or both.

The provision of pro bono assistance through the Court is not a legal right. Instead, it is an option available to assist the Court in the administration of justice. Litigants may also be asked to contribute to the payment of disbursements. Application may be made by motion to the Court for legal assistance. On an order being made, the Court will attempt to find a legal practitioner on the Pro Bono panel to provide assistance<sup>201</sup>.

In the 2002-2003 year 11 referrals were reported, 7 referrals were made in the 2003-2004 year and 10 referrals in the 2004-5 year.

**District Court of New South Wales Legal Assistance Scheme**

Referrals for legal assistance can be made by the Court pursuant to Part 28C of the New South Wales District Court Rules<sup>202</sup>. In the 2002-2003 year, 5 referrals were made and 3 referrals were made in the 2003-2004 year.

**Informal court and tribunal referral schemes**

Other courts are involved with more informal pro bono referral schemes, often in association with local professional associations. For example, in 1999 the Judges of the Court of Appeal of the Supreme Court of Queensland, with assistance from the Bar Association and Law Society in Queensland, established a pro bono scheme to represent litigants convicted of murder or manslaughter who had been refused legal aid. The scheme was extended in 2003 to juveniles and those under an apparent legal disability<sup>203</sup>.

The NSW Bar also participates in informal referral schemes at the Industrial Relations Commission of NSW, the Land and Environment Court of NSW, the Federal Court of Australia Refugee Review Tribunal Legal Advice Scheme and the Administrative Decisions Tribunal (ADT) of NSW.

The ADT NSW has a duty solicitor to give principal advice for anti-discrimination matters and external appeals. However, where the Tribunal sees fit, a matter may be referred straight to a pro bono scheme/provider for pro bono help. The particular case will be brought to the attention of the Client Services Manager who will then forward the matter to any of the Scheme providers. These include PIAC, PILCH, the NSW Bar Association and the NSW Law Society.

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201 See [www.lawlink.nsw.gov.au/sc/sc.nsf/pages/probono](http://www.lawlink.nsw.gov.au/sc/sc.nsf/pages/probono)

202 Firms interested in participating in this scheme should contact Assistant Registrar Anthony Grew at the District Court on (02) 9377 5862, PO Box K1026, Haymarket 1240, or DX 11518 Sydney Downtown

203 Supreme Court of Queensland, Annual Reports 2001/2003. See [www.courts.qld.gov.au](http://www.courts.qld.gov.au)

## MAPPING PRO BONO IN AUSTRALIA

### ***Duty lawyer schemes***

Duty lawyer schemes may be coordinated by the courts, legal aid bodies, professional associations or a group of local lawyers who frequent that court or tribunal. Schemes generally maintain a roster of lawyers available to give limited assistance to unrepresented litigants. For example, the Law Society of South Australia has run a pro bono duty roster at the Family Court which involves lawyers attending the Court and providing initial, one-off advice three mornings per week.

The NSW Bar Association participates in a number of pro bono duty lawyer schemes linked to various courts. As well as the formal pro bono assistance schemes of the District and Supreme Courts of NSW, and the Federal Court of Australia and the Federal Magistrates' Service, the NSW Bar maintains a roster of barristers to attend the central Sydney Local/District Courts (Downing Centre) each day and at the Australian Industrial Relations Commission of NSW.

The City of Sydney Law Society, with the assistance of Sydney firms and the NSW Bar, runs a duty lawyer scheme at the Downing Centre Local Court. Joint training sessions with the NSW Bar are undertaken from time to time. Mallesons Stephen Jaques has been involved in the service for more than 3 years with two Mallesons' lawyers attending on 7 mornings each month. Mallesons has organised a barrister to train its Downing Centre volunteers to run hearings for Apprehended Violence Orders.

Goulburn Valley Law Association in Victoria operates an informal pro bono domestic violence intervention order support scheme at Shepparton Magistrates' Court on Fridays. There are approximately 12 local practitioners rostered to take on cases referred by the Registrar. Assistance is limited to domestic violence cases (but not for appearances in contested applications) and to those people whose financial situation would be within the legal aid means test. The scheme is informal and there are no written records of the number of legal referrals undertaken<sup>204</sup>.

There are many other duty solicitor schemes at local courts across Australia, often coordinated by those who practise in that jurisdiction, and who may operate on a reduced-fee as opposed to a no-fee basis. Clients are usually referred to these schemes by legal aid solicitors. For example, duty rosters are coordinated by suburban practitioners at Burwood, Parramatta and Bankstown local courts in Sydney. Some lawyers working under these duty rosters report that their continued existence is only viable because they charge (reduced) fees.

There are no doubt many other informal (or formal) duty lawyer pro bono schemes, and in the interest of getting a fuller picture of the pro bono landscape across

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204 VLF Pro Bono Directory



Australia, the Centre is interested in hearing from lawyers who are involved in these initiatives.

***Other referral pathways to pro bono***

As noted in the introduction to this chapter, it seems that most people find pro bono legal assistance through personal contacts, CLCs or legal aid bodies or they are referred for assistance by a professional association or court-based pro bono referral scheme. There are other pathways for assistance, some of which are described below.

***Community organisations***

Some organisations broker links between community groups in need of assistance and professionals or organisations who are looking for ways to volunteer their expertise. This may include peak bodies such as the various Councils of Social Services. Local community organisations are generally responsive to local needs and are more likely to have a high acceptance rate from local people. The services depend on local resources but many offer some form of legal advice referral, among other services such as crisis and support, needs analysis, advocacy, policy or resource development and community education. Legal advice sessions are often provided at community or neighbourhood centres.

***Church based schemes***

Some churches facilitate or manage church-based matching schemes. For example, the St. John’s Legal Counseling and Referral Centre in Darlinghurst NSW was started in 1995 by Anglican Minister Mike Kirkpatrick. The service operates from St John’s Anglican Church on Monday evenings and on Wednesdays, during the day. The Centre does referrals in all areas of law but is also able to offer a limited amount of casework. The coordinator works closely with the Inner City Legal Centre, the Downing Centre and Macquarie Fields and Claymore Legal Centres. There are about 10 solicitors who volunteer during the day. The initial volunteers were Mallesons’ secondees at Macquarie Fields and Claymore Legal Centres, but now solicitors from a range of practices attend.

A similar program has also been established at All Saints Anglican Church, Greensborough in Melbourne. Another example is the Volunteer Service Bureau, coordinated by the Melbourne Catholic Social Services. The Bureau matches professional people, including lawyers, with over ninety Catholic welfare agencies that have clients in need of assistance<sup>205</sup>.

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205 See [www.css.org.au/directorydetails.asp?service\\_id=206](http://www.css.org.au/directorydetails.asp?service_id=206)

## MAPPING PRO BONO IN AUSTRALIA

### ***Pro bono opportunities in print and online media***

There are other less formal ways in which organisations facilitate pro bono opportunities. For example, the Law Institute of Victoria's Law Institute and the Law Society of NSW sometimes devote space in their professional journals to pro bono matters. The Law Institute Journal pro bono column (prepared by the Victoria Law Foundation) profiles a community group, lists its current needs, and provides contact details.

Technology is increasingly being used as a tool to provide access to pro bono services by using web sites to match volunteers with organisations in need of help. *www.clcvolunteers.net.au* is discussed above. Some examples of web-based matching sites are outlined briefly below.

### **Volunteer Match**

Volunteer Match is an initiative of Pro Bono Australia. It is an Internet service that matches skilled professionals with not-for-profit organisations. Volunteer Match at [www.volunteermatch.com.au](http://www.volunteermatch.com.au) now has more than 1800 registered not-for-profits, more than 1000 registered volunteers and hundreds of successful matches across Victoria, New South Wales and Queensland. While Volunteer Match initially involved accountants, it is now keen to expand and attract legal professionals. The Volunteer Match website allows professionals and not-for-profit groups to register their interests and opportunities. Volunteers can specify what role they would like to play – from board member, lawyer or mentor to general participant.

### **goodcompany**

*goodcompany* at [www.goodcompany.com.au](http://www.goodcompany.com.au) encourages volunteerism among professionals by linking its members with a broad range of community groups and charitable organisations in need of professional expertise. Some examples of legal assistance facilitated by *goodcompany* include volunteer lawyers being matched to Childwise and to the Australian Conservation Foundation. Legal advice was provided to Kids Under Cover for their bequest program and to the Victorian Foundation for the Survivors of Torture.

### **GoVolunteer**

GoVolunteer at [www.govolunteer.com.au](http://www.govolunteer.com.au) is an initiative of Volunteering Australia. It is similar to *goodcompany* and Volunteer Match and provides an online database listing available volunteer opportunities. Registration is not required and any member of the public can search and express interest in volunteering. No formal legal referral services are provided, but the site does list volunteering opportunities of a law-related nature.

**Ampersand.org.au**

Developed by students from Monash and Melbourne universities, the Ampersand Network was developed to assist students find a wide range of volunteer positions in Australia and overseas.

Using the resources of partners Volunteering Australia and Conservation Volunteers Australia, the Ampersand website provides access to over 5000 local volunteer (through *govolunteer*) and 2000 environmental volunteering opportunities, which can be searched according to geographic location and position type. There are few law-related opportunities listed.

**National Children’s and Youth Law Centre Cyber Volunteer Program**

There are also opportunities for lawyers to get involved in online volunteering. For example, the National Children’s and Youth Law Centre (NCYLC) recruits volunteer lawyers, law students and graduates across Australia to undertake a variety of tasks in support of the Centre’s general advocacy for and on behalf of children and young people. NCYLC has developed a website [www.ncylc.org.au](http://www.ncylc.org.au) which plays a strategic role in facilitating the national Cyber Volunteer Program (CVP) – a program specifically for volunteers who will not be based at the Sydney office. The program involves volunteer lawyers across all States and Territories.

**Other pro bono initiatives**

There are many projects, initiatives and schemes that have used varying degrees and types of pro bono support and assistance. Some of these are discussed elsewhere in this chapter and others are briefly referred to below.

**Spare Lawyers for Refugees (SLFR)**

Members of Spare Lawyers for Refugees (SLFR)<sup>206</sup>, a non-profit support and advocacy network for people held in Australian immigration detention centres, donate their time and expertise to assist asylum seekers to Australia. SLFR has a website which provides resources, precedents and information for its support network of over 250 lawyers including barristers, solicitors and law students across Australia. A relationship between SLFR and Melbourne University has involved students from Melbourne University’s Law Faculty in pro bono activity.

**Electronic Pre-lodgement Notices in the Civil Jurisdiction of the Magistrates Court in South Australia**

In South Australia, the Magistrates’ Court coordinates a pro bono mediation service as part of its ‘prelodgement’ notice system. Using an internet-based interface, the pre-lodgement system allows individuals or organisations to issue a final notice of claim prior to issuing a formal claim. Upon purchasing the notice (\$12 fee), the pre-lodgement system generates a final notice of claim which provides a number of .....

206 Founded by Melbourne barrister Julian Burnside QC, see [www.sparelawyers.com](http://www.sparelawyers.com)

## MAPPING PRO BONO IN AUSTRALIA

options for people to resolve disputes and recover debts *before* instituting potentially costly and time-consuming litigation<sup>207</sup>. The process encourages parties to conclude their matters by either paying the plaintiff the money sought, negotiating a settlement either informally or using an ‘Enforceable Payment Agreement’ (an EPA) which may include part payments, or seeking mediation. Mediation is facilitated by the Court, which maintains a list of about 45 appropriately trained mediators who conduct the mediation on a pro bono basis. An evaluation of the pre-lodgement notice system in the 2002–03 financial year found that of those notices which proceeded to mediation, around 72% settled<sup>208</sup>.

### 4.3 Pathways to pro bono in regional, rural and remote Australia

There are particular difficulties associated with the delivery of pro bono legal services in regional, rural and remote (RRR) areas. The data available on pro bono output indicates that a substantial proportion of pro bono legal assistance is delivered in regional areas by sole practitioners and small firms<sup>209</sup>, but the need for assistance in RRR areas remains high.

The Centre published a paper on RRR pro bono<sup>210</sup> in May 2006. The paper discusses the barriers to RRR pro bono, explores some models of pro bono assistance that could be applied in RRR areas and describes some of the State and Territory initiatives aimed at addressing the unmet need in RRR areas. Some of these initiatives are outlined below.

#### ***Facilitating RRR pro bono in NSW***

In 2004–2005, with funding support from the Law and Justice Foundation of NSW, the Centre undertook three ‘pilot’ projects aimed at improving access to legal services for disadvantaged and marginalised people in regional, rural and remote (RRR) communities in NSW. The pilots involved RRR CLCs and city-based pro bono practices partnering to develop multi-level assistance to the CLCs over a period of time. The participants held face to face ‘relationship building’ meetings in the CLC region, enabling the city based team to meet the CLC workers and to acquaint themselves with the community and its needs.

The areas on which the partnerships focused included advice and representation, community legal education and law reform, mentoring, research and IT assistance and professional development and training. A project worker at the Centre maintained

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207 See [www.courts.sa.gov.au/courts/magistrates/final\\_notices.html](http://www.courts.sa.gov.au/courts/magistrates/final_notices.html)

208 Dr Andrew Cannon, ‘An Internet court pre-lodgement system evaluated’, in (2004) 7(1) *Internet Law Bulletin* 7.

209 See Chapter 5, How much pro bono is delivered?

210 See *Regional, Rural and Remote Pro Bono: Models and Opportunities* at [www.nationalprobono.org.au/documents/RRRPaper.pdf](http://www.nationalprobono.org.au/documents/RRRPaper.pdf)

contact with each of the pilot participants to document the forms of contact, and to explore what worked well and what could be improved. The partnerships have continued beyond the initial pilot period.

***NSW Cooperative Legal Service Delivery Model (CLSDM)***

In March 2004, the Legal Aid Commission of NSW established an innovative pilot program in the Central and Far West and the Northern Rivers areas of NSW<sup>211</sup>. The CLSDM is a regionally based approach to service delivery that aims to enhance client outcomes by improving cooperation between key legal service providers. Its overall objectives are to increase the range of legal services delivered to a particular region and to make them more accessible by improving referral efficiencies. The initiative involved forming ‘regional coalitions’ of legal and quasi-legal service providers from local courts, CLCs, legal aid commissions, legal information access centres, private law firms, community justice centres and other service providers. Each coalition member attends quarterly meetings in the region. The pro bono component involves city-based firms accepting referrals as well as providing other assistance to legal service providers in the region. These referrals were usually from CLCs or legal aid offices.

Following an evaluation in 2005, the CLSDM is expanding to two new regions each year, commencing in 2006 with the Wagga/Albury and Newcastle districts of NSW.

***RRR pro bono in Victoria***

PILCH Victoria has developed a number of strategies to address the significant problems in availability and provision of pro bono services in RRR areas. One is to consciously establish relationships with CLCs and other community based organisations in order to develop awareness of opportunities for assistance. Another is to encourage city-based members to extend their services to RRR areas.

PILCHs Homeless Persons’ Legal Clinics are located in the city but the program has targeted homeless people outside the city by holding half-day training workshops in the Barwon, Grampians and Bendigo areas. Each workshop was attended by 15-30 people and there are plans to extend workshops into nine RRR areas and to also cover credit and debt matters.

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211 See [www.legalaid.nsw.gov.au/asp/index.asp?pgid=712](http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=712)

## MAPPING PRO BONO IN AUSTRALIA

### ***RRR project in Queensland***

In response to private law firms in rural and regional Queensland seeking assistance to undertake pro bono work, QPILCH and the Queensland University of Technology School of Justice Studies received a grant to undertake research in Queensland. The project aimed to identify unmet needs for pro bono legal services and a survey has been conducted in 2006 in conjunction with the Centre's National Survey project [see 5.8]. It is proposed that two pilot projects will be developed linking two regional/rural firms and two metropolitan firms in order to provide pro bono legal services to rural and remote areas of Queensland. From the pilot projects, it is proposed that a set of protocols will be developed setting out the relationship between the firms, as well as the scope of work and the kind of assistance to be provided.

### ***RRR pro bono in the Northern Territory***

In 2005, a meeting of all the legal aid service providers in the Northern Territory (NT) and some pro bono providers (local and national) met in Darwin to identify unmet legal needs, challenges and overlaps in services and to find a range of solutions through cooperative arrangements and expansion of services.

The workshop participants identified a number of models and initiatives to provide local pro bono assistance, but recognised the limited capacity of local firms. They noted that the Law Society should prepare a statement to encourage local practitioners to undertake pro bono work and that it could coordinate efforts in this area with the assistance of national firms with structured pro bono programs. The workshop participants also identified a number of ways in which pro bono could be provided, as well as particular projects.

The workshop recognised that a coordinated approach to legal service delivery leads to greater communication and awareness of needs. A number of pro bono initiatives followed, for example the partnership between Clayton Utz and Top End Women's Legal Services described in Chapter 3. In November 2006, at the second annual Pro Bono and Legal Services Conference hosted by the Law Society of the Northern Territory, unmet legal needs were discussed and an action plan was developed with a view to participants working together to address the highest unmet needs. The Conference was opened by the NT Attorney-General, The Hon Syd Stirling and was well attended by local legal service providers, NT Legal Aid, NT Department of Justice officers and some interstate pro bono coordinators and local legal practitioners<sup>212</sup>.

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212 For further information contact Zoe Malone at the NT Law Society on 08 8981 5104.

# 5 How much pro bono is delivered?

## 5.1 Introduction

In general terms we know how many lawyers work for publicly funded legal services, and we know how much money is spent by government on legal aid, CLCs and Indigenous legal organisations. But we don't know with any certainty how many lawyers or law firms provide pro bono services, how much they provide or the cost of those services.

Pro bono has historically been carried out on an ad hoc basis, and only recently has it become more structured, both at an individual lawyer or firm level, and as a distinct player in the access to justice landscape. With the current and increasing interest in pro bono, there appears to be a compulsion to quantify pro bono output in terms of hours and money expended.

This section of the Report presents what information *is* available about how much, and what sort of pro bono is being delivered. We have not translated the quantity into a monetary amount.

## 5.2 Data sources

Despite the above disclaimers, the Centre can present a snapshot, albeit inconclusive, of the emerging pro bono landscape in Australia, using existing but incomplete data sources about the amount of pro bono delivered. These sources of information include:

- interim data from the Centre's pilot pro bono survey in Queensland in March/April 2006;
- periodic Australian Bureau of Statistics (ABS) surveys of the legal profession;
- periodic surveys by professional legal associations (Law Societies of NSW and ACT);
- statistics from pro bono referral agencies in QLD, NSW and Victoria;
- statistics from court pro bono referral schemes;
- figures from the National Association of Community Legal Centres on the number of lawyers and students volunteering at CLCs;
- reports from firms about their pro bono programs;
- data from Inquiries and various Task Forces.



# MAPPING PRO BONO IN AUSTRALIA

## **Data accuracy**

Care needs to be taken with the available sources of information. In relation to the ABS data, in addition to the significant potential sampling errors and the ABS's own caution about the absence of accurate record keeping of pro bono work, small firm practices may report more pro bono than larger firms because of definitional issues and the way in which the data is collected. Firms were asked *after* the relevant year, how many hours legally qualified staff in their practice had spent on pro bono work during the previous year. While some firms keep accurate records of pro bono hours, many do not and they presumably make an estimate based on their recollection of the past year. Moreover, large firms have precise definitions of pro bono which often limit the work which is counted as pro bono to matters for disadvantaged clients or public interest causes. Small firms typically do not have such restrictive definitions and may include work done for local sporting, community or cultural organisations which would not necessarily be considered pro bono work by all in the legal profession.

The ABS identified the larger firms as less likely to keep accurate records of pro bono activity. However, it is the Centre's experience that the larger firms do keep more accurate records of pro bono activity. This may not have been the case in 2001, or may not have been the case in the sample chosen by the ABS which also revealed an uneven pattern of pro bono work between larger firms.

## **5.3 How many lawyers, and how much pro bono do they do?**

The ABS collected some data on pro bono work in its 1998–99 and 2001–02 surveys<sup>213</sup>. Unfortunately, criteria have not been consistent and some of the material cannot be compared over time.

Law firms, barristers, pro bono clearing houses, professional associations and some court referral schemes also report on their pro bono activities and a few have translated the amount of pro bono work into monetary terms<sup>214</sup>.

The 2001–02 ABS survey reported on lawyers' estimates of pro bono work<sup>215</sup>. The ABS asked solicitors and barristers to report on pro bono legal services provided without expectation of a fee, pro bono legal services provided at a reduced fee, pro bono community legal education and law reform work, and legal aid work done at a reduced fee. According to this survey, as at June 2002, 4,744 private solicitor

213 Australian Bureau of Statistics, 8667.0 – Legal Services Industry, Australia, 1998–99; Australian Bureau of Statistics 8667.0 – Legal Practices, Australia, 2001–02 (hereafter ABS Report 2001-02).

214 For example, QPILCH has estimated that in the 2003–4 financial year, member firms and barristers contributed over \$1million in pro bono legal services in Queensland. See *QPILCH Newsletter*, Issue 6, August 2004, available at [www.qpilch.org.au/](http://www.qpilch.org.au/)

215 Australian Bureau of Statistics, *Legal Practices 2001–2*, 8667.0.

## HOW MUCH PRO BONO IS DELIVERED?

practices (around 63%) and 2,878 barrister practices (78%) reported doing some sort of pro bono work.

The ABS definition of pro bono excluded contingency arrangements, free first consultations, and incentive discounts for regular clients, but unusually included legal aid cases at a reduced fee. From this survey the ABS estimated that in 2001-2002 Australian lawyers provided a total of 2.3 million hours of pro bono work. The earlier ABS survey conducted in 1998-99 revealed a similar contribution, but this did not include legal aid work<sup>216</sup>, which points to a decrease in pro bono output by Australian lawyers during the period between surveys.

Taking only work that appears to have been done unpaid or without expectation of a fee (with the intention of excluding reduced fee legal aid work), solicitors reported 786,100 hours of pro bono work and barristers 203,300 hours for a total of 989,400 hours<sup>217</sup>. 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.

From other sources, it is estimated that as at June 2002, there were between 2500 and 3500 people volunteering at CLCs throughout Australia, with 1300 to 1700 being lawyers. Based on an average voluntary contribution of 10 hours per month<sup>218</sup>, total volunteer hours at CLCs were approximately 400,000, of which about 200,000 were performed by lawyers<sup>219</sup>. It has been suggested that the figure may be higher<sup>220</sup>.

The Centre and others have had concerns about the accuracy of the ABS data. Other difficulties in accurately quantifying pro bono are the absence of a generally accepted definition of pro bono<sup>221</sup> and the low rate and/or unreliable and sometimes incomparable information about pro bono output by firms and legal professional associations<sup>222</sup>.

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216 Australian Bureau of Statistics, *Legal Services Industry 1998-99*, 8667.0.

217 There is a great deal of reduced fee work undertaken by the profession which has been excluded, primarily as there is no information on how much the fee is reduced.

218 R Melville, *My Time is Not a Gift to Government, an Exploratory Study of NSW Community Legal Centre Volunteers*, University of Wollongong, May 2002.

219 ABS 8667.0 2001-02 Survey, tables 2.9, plus estimates based on R Melville, *My Time is Not a Gift to Government, an Exploratory Study of NSW Community Legal Centre Volunteers*, University of Wollongong, May 2002, plus personal communications.

220 See Senate Inquiry into Legal Aid and Access to Justice, (the Senate Report 2004) Final Report, [www.aph.gov.au/Senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/](http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/) para 9, 16 at 165 and footnotes therein. These echo difficulties in quantifying the extent of pro bono legal services in Australia.

221 See discussion in the Australian Law Reform Commission, *Managing Justice – A review of the federal civil justice system*, Report No. 89, 2000 at p 305. See also discussion on definitions earlier in this Report at 1.2.

222 The 2004 *Senate Report* also noted, at 164, the absence of any nationally coordinated record-keeping.

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### ***Is pro bono output increasing?***

In recent years there appears to have been significant growth in pro bono activity, or at least in commentary and publicity about pro bono activity, particularly about the work of the larger firms with structured pro bono programs. The Centre has noticed an increase in the number of firms formalising their pro bono activity and appointing pro bono directors and coordinators. An informal survey of these larger law firms points to an increase in their pro bono output over the last three years but there is little solid empirical evidence to support the proposition that pro bono output is in fact increasing across the whole profession.

Some firms now publicly report the number of pro bono hours undertaken by their firms in Pro Bono (and community service) Annual Reports<sup>223</sup>. Six large firms stated in a submission<sup>224</sup> to the Attorney-General's Department that they had provided more than 75,000 hours of in-house pro bono legal assistance in the 2003 financial year for clients who would not otherwise have had access to legal advice and assistance.

The Centre also notes an increase in the occasions when firms may be required to report on their pro bono activity, which may explain the rising visibility of pro bono output. For example, from 2002–05, law firms participating in the Panel arrangements on the Government Legal Services (GLS) Panel in Victoria provided \$6.6 million worth of pro bono legal service. For details of this scheme see Chapter 6.1.

The Centre also notes that potential corporate and government clients are asking firms invited to tender for legal work to describe and report on their pro bono legal work as a condition of their consideration of the tender. The detail being requested suggests, in some cases, that the purchasers of legal services are not just interested in the mere existence of pro bono output, but in diverting their legal spending to firms with structured and focused pro bono programs<sup>225</sup>. For example, some firms are being asked to provide details of pro bono work by each partner, suggesting a preference that pro bono work be shared by all the firm's lawyers. Other tenders have asked for disclosure of the gender of employees undertaking pro bono work, and the volume of pro bono as a percentage of the firm's total work.

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223 For example, see Pro Bono Reports by Clayton Utz, Freehills, Blake Dawson Waldron, Gilbert + Tobin and Mallesons.

224 Submission by the pro bono programs of Allens Arthur Robinson, Baker & McKenzie, Blake Dawson Waldron, Clayton Utz, Gilbert + Tobin and Henry Davis York to the Federal Civil Justice System Strategy Paper, June 2004, available at [www.nationalprobono.org.au/publications/other.html](http://www.nationalprobono.org.au/publications/other.html)

225 See Nicolas Patrick, 'Pro bono gives some firms an edge' in *NSW Law Society Journal* (June 2005) at 30.

## 5.4 Practice size and regional variations

According to the ABS survey, the solicitors/barristers in solicitor practices with only one working principal worked an average of 99 pro bono hours each in 2001–02, compared with an average 20 hours per solicitor/barrister in solicitor practices with ten or more working principals/partners<sup>226</sup>.

The 2001–02 ABS survey indicated a higher level of pro bono work being undertaken outside capital cities and that small practices report significantly more pro bono work than larger practices. If reduced fee as well as free pro bono work (as well as legal aid work, not considered by the Centre to be pro bono work at all) are included, capital city practices undertook an average of 48.2 hours per lawyer compared to 109.4 hours by lawyers elsewhere. Capital city practices also spent slightly less time on continuing legal education with 29.8 hours per solicitor/barrister, while solicitors/barristers elsewhere undertook 31.4 hours on this activity. Despite the definitional problems, a similar regional variation is reflected in the 2003–04 NSW Law Society Practising Certificate Survey<sup>227</sup>.

The 2001–02 ABS survey indicated that practices with one principal reported 243<sup>228</sup> hours per lawyer compared to their large practice counterparts who reported an average of 24 hours<sup>229</sup> per lawyer. That is, the 7,462 solicitors employed by firms with only one principal reported providing an average of 40 hours ‘free’<sup>230</sup> pro bono per annum each as against 16 hours per annum reported for each of the 10,431 solicitors employed by the 91 largest firms (those comprising ten or more principals/partners)<sup>231</sup>.

An earlier 1998–99 ABS survey produced a similar result, although the figures are not strictly comparable as the division of firms into different sizes was based on the number of people employed at a practice rather than the number of principals/partners, as in the later ABS survey. However, the 1998–99 ABS survey estimated that the 8,312 solicitors at firms employing less than ten people each provided an .....

226 ABS, *Legal Practices 2001-02*, Report No 8667.0, 25 June 2003, at 12.

227 Percentages of firms doing pro bono work: 71% country, 56% suburban and 47% city, see *Law Society of NSW Practising Certificate Survey 2003-04* (October 2003).

228 Calculations based on Table 2.9 and Table 2.10 in ABS, *Legal Practices 2001-02*, Report No 8667.0, 25 June 2003. 3032 sole practice lawyers did 736,500 hours of pro bono work.

229 Calculations based on Table 2.9 and Table 2.10 in ABS, *Legal Practices 2001-02*, 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.

230 Not including ‘reduced fee’ pro bono. If reduced fee pro bono had been included, the comparison would be 63 hours per annum by each solicitor working in a small firm against 19 hours per annum for larger firm solicitors.

231 Calculations based on comparisons of Table 2.8 and 2.9 in ABS, *Legal Practices 2001-02*, Report No 8667.0, 25 June 2003. The trend of smaller firms reporting more pro bono services than larger firms is also reflected in data in the UK. See *The Pro Bono Work of Solicitors, Findings from Omnibus Survey Nine* (2002, The Law Society UK) which reported that firms with between two and four partners were most likely to have undertaken pro bono work in the previous year – 30% of solicitors compared to 16% of firms with between 11 and 25 partners.

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average of 58 hours ‘free’<sup>232</sup> pro bono per annum as against 13 hours per annum each for the 7,878 solicitors employed by the 76 largest firms (those employing more than 99 staff).<sup>233</sup>

It is difficult to draw a definitive conclusion from the ABS data that points to differences in levels of pro bono work performed by large and small firms. What is clear is that the spread of pro bono activity amongst law firms is uneven. While the ABS data indicates that more pro bono work is done by small firms, often in a regional setting, the Centre’s research shows that a number of larger city firms with structured pro bono programs undertake a significant quantity of pro bono in varying forms, in many cases well above the ABS approximation. This leads to the conclusion that a number of other larger and mid-tier firms are doing very small amounts of pro bono work, and that there is room to increase pro bono work in these firms.

### 5.5 Comparing data from referral schemes and law firms

Some of the larger law firms with structured pro bono programs have published annual pro bono reports on the amount, type or variety of pro bono legal work they undertake.

A comparison of the output of some private law firms compared to the output of pro bono referral schemes points to the significant contribution these firms make to pro bono legal services. By way of example, in the 2004-2005 financial year, the total number of referrals from the pro bono referral schemes (that is, the pro bono schemes of the Law Society of NSW, Bar Association of NSW, Law Institute of Victoria, Victorian Bar, and PILCHs in NSW, Victoria and Queensland) was just over 1000. During the same period, five firms with structured pro bono programs handled over 2100 matters. This figure does not include the casework done by lawyers from these firms seconded to CLCs: one firm’s secondment program assisted more than 1500 people during this same period<sup>234</sup>.

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232 Not including ‘reduced fee’ pro bono. If reduced fee pro bono had been included the comparison would be 126 hours per annum by each solicitor working in a small firm against 18 hours per annum for the larger firm’s solicitors.

233 Calculations based on comparisons of Table 2.8 and 2.9 in ABS, *Legal Services Industry 1998-99*, Report No 8667.0, 18 August 2000.

234 See Blake Dawson Waldron Pro Bono Annual Report 2004–2005 at 2.

## 5.6 What areas of law?

There is no comprehensive data on the areas of law in which pro bono legal services are provided. The ad hoc nature of pro bono, the tendency not to report on pro bono, and consequential lack of data has already been noted. In the absence of comprehensive empirical information, only inexact and selective observations can be made, based on available statistical data from some of the pro bono schemes and organisations that record this information.

There is, however, one client group which does stand out as being broadly supported with pro bono legal assistance from the profession across Australia. These are the self-represented litigants in migration matters, mainly asylum seekers. For example, the South Australian and Western Australian bar, and organisations such as Spare Lawyers for Refugees<sup>235</sup>, have given broad support to assisting this client base, often with explicit appreciation from the Courts<sup>236</sup>.

Analysis of the last few years of annual and other reports from PILCHs, professional association and court-based pro bono schemes (to the extent that they are available) indicates the following trends<sup>237</sup>:

- The majority of PILCH work appears to be for organisations rather than individuals, largely concerning corporate governance and taxation type matters. Administrative law matters were the next highest category of work.
- The majority of referrals in the barrister associations have been in migration matters.
- Most Federal Court-based referrals are in migration matters, and the referrals are mainly to barristers.

Other general observations are:

- Statistics from the NSW Law Society Pro Bono Referral Scheme show that around 30% of pro bono referrals in the year ending June 2003 were in civil law, around 22% were in criminal law matters and 20% were in family law. Immigration matters were 12%<sup>238</sup>.

235 See [www.sparelawyers.com/](http://www.sparelawyers.com/)

236 See, for example, comments by the Court in *Asalib v Manager Baxter Immigration Detention Facility* [2004] FCA 352; see also comments by Black CJ and French J in *Ruddock v Vadarlis (No.2)* (2001) 115 FCR 229 at para [28] where the Court commented on the quality the pro bono representation that ensured that the proceedings and the important questions to which they gave rise were pursued and resolved with expedition and efficiency. See also Gleeson CJ in a speech to the National Access to Justice and Pro Bono Conference 2006 where he thanked the WA Bar Association for its assistance in providing pro bono representation for asylum seekers in the High Court. See [www.nationalprobono.org.au/resources%20for%20students/documents/GleesonCJ11aug06.pdf](http://www.nationalprobono.org.au/resources%20for%20students/documents/GleesonCJ11aug06.pdf)

237 This analysis does not include the work done by the Homeless Persons' Legal services in Sydney, Melbourne or Brisbane.

238 NSW Law Society, Pro Bono Referral Scheme Monthly Statistical Report, June 2003.

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- Figures from the Victoria Bar Legal Assistance Scheme (VBLAS) identify criminal law, family law, migration law and property law as areas in which more than 10 referrals were made during the 2004/05 financial year, with migration law being the busiest area of practice.
- VBLAS made more than 5 referrals in each of the areas of commercial, consumer credit and personal injuries with referrals in smaller numbers in at least 26 other practice areas<sup>239</sup>.
- The NSW Bar Association's Legal Assistance Referral Scheme (LARS) accepts and refers a high (and steadily increasing) proportion of matters in immigration law (in the Federal Court), equity (in the Supreme Court of NSW) and in civil and criminal matters (in the District and Local Courts of NSW). Fifty percent of its tribunal referrals are from the Administrative Decisions Tribunal. Almost 50% of the work referred through LARS involves merits assessment, about 40% is appearance work and about 26% is advice work over and above initial merit assessment <sup>240</sup>.
- In the area of migration law, over 80% of all referrals from the Federal Court under its O 80 pro bono referral scheme have been in the area of migration, with the majority being refugee matters, most of which have historically been in Western Australia<sup>241</sup>. However, recent years have seen a significant decline in migration referrals<sup>242</sup>. Migration matters were the largest area (25.8%) referred for pro bono assistance under the Victorian Bar Legal Assistance Scheme.
- Interim results from the Centre's pilot survey in Queensland<sup>243</sup> point to a high proportion of pro bono work being done in family and criminal law. The roll out of the National survey will give a clearer picture and more comprehensive data about areas of law in which pro bono is provided.

In summary, law firms with structured programs undertake a broad spread of pro bono activity, which includes work for individuals and not-for-profit organisations and charities. Other firms target their pro bono output to particular areas, for example, refugee work, assisting people with an intellectual disability or mental illness, Indigenous people and people in rural, regional and remote areas or providing taxation/charitable status assistance to not-for-profit organisations. Accordingly, information on areas of law being done by law firms varies and may be contingent

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239 Victorian Bar Legal Assistance Scheme *Annual Report 2004–5*.

240 See Bar Association of NSW *Annual Report 2005* at 41-46, at [www.nswbar.asn.au/database/bar\\_brief/documents/AR05\\_web.pdf](http://www.nswbar.asn.au/database/bar_brief/documents/AR05_web.pdf).

241 Statistics up to 31 December 2005. The scheme commenced at the Federal Court in 1998.

242 For example, between 1998 and 2001 there were 289 referrals for assistance in migration matters in Western Australia, and in 2005, there were 16 referrals in migration matters in the same state.

243 See [www.nationalprobono.org.au/publications/documents/Qldsurveyprelimreportfinal.doc](http://www.nationalprobono.org.au/publications/documents/Qldsurveyprelimreportfinal.doc)



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on their focus areas. For example, one large law firm with a structured practice reports its top five areas of law are discrimination law, victims compensation, corporate governance for non-profits, tax work for non-profits and work associated with its work with the Homeless Persons' Legal Service. Another mid-tier firm with an emerging structured program reports the majority of its work is in assisting non-profits with corporate governance, charity law, employment law, and a small proportion (5%) of work in guardianship and law reform work.

### 5.7 Capacity for pro bono to meet need

Data from the organised pro bono schemes indicate that there are far more applications for pro bono assistance than can be successfully referred, with percentage referral rates ranging from 20% to 49%<sup>244</sup>. While each scheme applies its own criteria and services in only a limited demographic, this seems to show that the schemes are insufficient to meet the level of demand for pro bono assistance. The NSW Refugee Advice and Casework Service (RACS) specifically states that it cannot meet the demand for refugee advice, and that almost 40% of its ongoing community casework assistance is provided on a pro bono basis<sup>245</sup>. Law firms similarly report that they cannot meet the demand for pro bono assistance. They estimate that they reject between two to three matters for each one they take on. Reasons for rejection include conflicts, current lack of expertise or capacity.

### 5.8 Current survey plans

The *2004 Senate Report* noted that while there have been significant developments in pro bono service provision, particularly in terms of increased coordination, 'data on the nature and extent of pro bono services nationally is still sparse'<sup>246</sup>. The Committee recommended that the Centre encourage and support law firms, CLCs, pro bono referral schemes and legal aid commissions to record and report statistics on pro bono service provision<sup>247</sup>.

After the problems noted with the ABS data, the Centre sought input into future ABS surveys, for example, suggesting that the survey collect data on the types of assistance provided (advice, litigation, transactional), the areas of law (crime, family, civil) and the client type (individual and organisation). However, the ABS has indicated that it has no plans to survey the legal profession in the near future. In the absence of any other source of reliable or national data, the Centre, with the

244 Calculated as an average of percentage of referrals from 7 schemes.

245 Senate Inquiry into Access to Justice, Oral submission, 13 November 2004 at 99.

246 Senate Inquiry into Legal Aid and Access to Justice, Final Report, [www.aph.gov.au/Senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/contents.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/contents.htm) at xix.

247 Senate Inquiry into Legal Aid and Access to Justice, Final Report, [www.aph.gov.au/Senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/contents.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/contents.htm), Recommendation 48 at para 9.21.

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support of the Law Council of Australia, has embarked on a national survey of the profession to obtain better data about the amount and type of pro bono work being done.

### ***The Centre's National Survey***

The Centre has commenced work on a national survey of the pro bono output of the legal profession. The survey is being undertaken on a state by state (and territory) basis. At the time of writing, a pilot had been undertaken in Queensland with assistance from the Law Society of Queensland and the Faculty of Law at the Queensland University of Technology. While the sample size is small, the data nonetheless sits comfortably with other documented and anecdotal information about pro bono output. While the data has not yet been analysed in detail, and must be approached with caution due to the small sample, interim analysis suggests the following trends:

- Almost 80% of respondents had undertaken pro bono work in the previous 12 months.
- 21% of these respondents estimated they had undertaken between 11-20 hours of pro bono work during the previous 12 months, 8% estimated between 21-30 hours, 14% between 31-40 hours, 11% between 41-50 hours, 10% between 51-70 hours, and 23% estimated doing over 90 hours of pro bono work during the previous 12 months.
- The top areas of law in which pro bono services were provided were (in order of frequency) family, criminal, wills & probate.
- The main sources of pro bono work came from existing clients (17%), family or friends (16%), CLCs or other community organisations (14%), and direct 'cold calls' from potential clients (14%). Less than 2% of work came from Indigenous legal organisations.
- The highest proportion of pro bono work (47%) was undertaken within a firm and was more likely to be written or verbal advice rather than litigation. Volunteering at a community organisation followed as the next most frequent form of pro bono (35%).
- The top motivators for doing pro bono work are 'to help the disadvantaged' and 'personal satisfaction', closely followed by a sense of professional responsibility to do pro bono work.
- The most frequently identified barrier to pro bono work is lack of time (35%), followed by lack of expertise in relevant areas of law (16%). Ten percent (10%) of respondents had concerns about conflicts of interest with their fee-paying clients.

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These findings have not yet been analysed in detail but the Centre has released a Preliminary Report<sup>248</sup>. The data from this pilot and further national survey results, once collated and analysed, will be useful to elucidate how and to what extent pro bono service delivery relates to the increasing body of information about unmet legal needs<sup>249</sup>.

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248 *Pro bono legal work undertaken by members of the Law Society of Queensland: Preliminary Report* at [www.nationalprobono.org.au/documents/Qldsurveyprelimreportfinal.pdf](http://www.nationalprobono.org.au/documents/Qldsurveyprelimreportfinal.pdf)

249 See, for example, the Access to Justice and Legal Needs program at the Law & Justice Foundation of NSW, at [www.lawfoundation.net.au/](http://www.lawfoundation.net.au/)

## 6 How does pro bono fit within the access to justice landscape?

This chapter discusses how pro bono fits within the broader access to justice landscape. It discusses government support for pro bono in the context of government funded legal services and suggests that better justice outcomes for disadvantaged and marginalised people can be achieved where pro bono providers work collaboratively in partnership with other justice sector legal service providers.

### 6.1 Government support for pro bono

In October 2000 the Commonwealth Attorney-General facilitated the First National Pro Bono Conference. This led to the founding of the National Pro Bono Task Force, which recommended the establishment of an Australian Pro Bono Resource Centre<sup>250</sup>. The National Pro Bono Resource Centre commenced operations in August 2002 with Commonwealth funding for 3 years. In May 2005, the Commonwealth agreed to fund the Centre until July 2009, and in November 2005, all State and Territory Attorneys-General agreed that they would jointly provide complementary funding to the Centre. Government funding support for the Centre recognises the value of the Centre's role in stimulating and encouraging the development, expansion and coordination of pro bono services.

One of the *Task Force Report's* underlying principles for future action included an explicit role for government in encouraging and supporting pro bono initiatives, above and beyond funding of the Centre<sup>251</sup>. For example, the Task Force recognised that government might assist in overcoming some of the structural barriers to pro bono work such as disbursements, court fees and other court-related costs. However, there is also a positive role that government can play in encouraging pro bono work, for example, taking account of pro bono work as a factor in awarding tenders for government legal work.

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250 *Task Force Report* at 14.

251 *Task Force Report* at 13.

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In February 2005, the Hon. Philip Ruddock, Attorney-General of Australia said of pro bono in Australia:

- Pro bono work holds an important place in our justice system.*
- It helps to ensure that the delivery of justice is fair and independent.*
- It helps to ensure our legal system is accessible to all.*
- And it helps to ensure that the law and the legal profession continue to be of service to the community.*

*The value and extent of pro bono work should not be underestimated. Pro bono work is not something that goes on at the margins of the profession. It is integral to the work of legal practices of all types.*<sup>252</sup>

The Victorian Government has actively pursued policies to support and promote pro bono legal practice. In June 2000, the Victorian Attorney-General, Rob Hulls, announced a Pro Bono Secondment Scheme which envisaged the secondment of solicitors from private law firms to Victoria Legal Aid and community legal centres. The objectives were to increase the resources of the legal aid sector, to increase the involvement of the private legal sector with the legal aid sector and to foster ongoing partnerships between them<sup>253</sup>.

A successful pilot scheme involving 6 firms ran from March 2002 to March 2003. In October 2005, it was re-named the Attorney-General's Community Law Partnerships Scheme and it is now a continuing feature of pro bono practice in Victoria, supported by the Victorian Federation of CLCs with the Victoria Law Foundation.

In 2002, the Victorian Government used its bargaining power to encourage law firms to undertake pro bono by making it a condition of the Government Legal Services contract that each firm be required to spend a percentage of the amount of fees derived from legal work for government on 'Approved Cause' pro bono work. Guidelines<sup>254</sup> set out a definition of an 'Approved Cause' that is broad enough to include the secondment arrangements under the Victorian Government's secondment scheme. In August 2005, 32 firms reported to Government for the first time on their compliance with this condition and in October 2005<sup>255</sup>, the Attorney-General announced that the firms had provided \$6.6 million worth of pro bono legal services between 2002 and 2005.

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252 Speech at a managing partners' lunch at the Law Society of NSW, 14 February 2005.

253 Pro Bono Secondment Scheme Report – April 2004, Department of Justice, Victoria.

254 Pro Bono Policy Guidelines, [www.justice.vic.gov.au/CA256902000FE154/Lookup/GLS\\_PDFs/\\$file/ProBonoPolicyGuidelinesAmended.pdf](http://www.justice.vic.gov.au/CA256902000FE154/Lookup/GLS_PDFs/$file/ProBonoPolicyGuidelinesAmended.pdf)

255 Announced by Attorney General Rob Hulls at the Victoria Law Foundation Annual Pro Bono Workshop, 17–19 October 2005.

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An independent review of the Panel Contract arrangements was announced by the Victorian Department of Justice in July 2006. The terms of reference include an assessment of the extent to which the Panel arrangements increased the amount of pro bono work undertaken (of the kind approved by the Department) and increased the briefing of women barristers. The review will also look at how the panel arrangements are regarded among legal service providers. The Review had not published its findings at the time of writing this Report.

Also in Victoria, a new class of practising certificate, for the purpose of legal volunteering at CLCs, was introduced as part of the ‘national model’ changes to the *Legal Profession Act 2004* (Vic). There is no fee for the certificate which will make it easier for government lawyers, retired lawyers or those on temporary leave to work with CLCs. The Act commenced on 1 December 2005.

In April 2004, aware of the perceived conflict that arises when pro bono legal assistance is provided in matters against Government, the Centre asked each government to consider implementing a protocol which clearly stated that firms will not be prejudiced in securing or retaining Government work if they act pro bono against Government. Regrettably, the Protocol has not yet been implemented in any jurisdiction. See Chapters 7 and 8 for further discussion about conflicts of interest.

### **6.2 The relationship between government funded and pro bono legal services**

Government support for pro bono has caused some disquiet among those who fear that any increase in pro bono legal services will be used as a justification for a continued reduction in funding for legal aid and CLCs. While there is no evidence to suggest that decreased funding of public legal services is linked to state support for pro bono, there is undoubtedly a relationship between pro bono and the government funded legal aid commissions, CLCs and ILOs that are the main providers of legal services to the disadvantaged.

The relationship between publicly funded services, client need and pro bono is direct. For example, legal aid means tests are sometimes so stringent that many applications for aid are rejected even though the applicant may not have sufficient funds to pay a lawyer and their case may have merit. Furthermore, one of the biggest gaps in legal aid coverage is in civil law where it is difficult, if not impossible, to get a grant of aid for many kinds of cases. In some complex family law matters, grants of aid are insufficient to adequately cover costs.

CLCs are often under-resourced and under-staffed which means they may not be able to provide the much-needed legal representation to their clients. In the case

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of Indigenous legal services, the lack of services and knowledge about available services, the inability to reach communities, the prevalence of conflicts of interest and the low numbers of private lawyers willing or available to do legal aid work in small remote communities, may mean that many clients do not or cannot access legal assistance at all.

### 6.3 Unmet legal needs

Pro bono sits alongside other service providers such as legal aid and CLCs in attempting to meet some of the unmet legal needs in the community. A successful pro bono project or program is one that has regard to the work of those other service providers and identifies the gaps in legal service delivery.

This section provides an overview of unmet legal need and outlines the work of the main publicly funded legal services that work with disadvantaged and marginalised people. This is included because the Centre believes that one of the best ways to determine where legal assistance is most needed and to develop an effective response within the available resources, is through ties and partnerships with community organisations and legal aid bodies that have regular contact with clients to whom pro bono lawyers could target and direct their work.

The legal needs of people who cannot afford to pay for legal services are met largely through:

- publicly funded legal aid services in each state and territory;
- Indigenous legal services;
- CLCs and advice services at other community organisations;
- advice services offered by some law societies such as citizens advice bureaus.

Despite the absence of national and reliable data on unmet legal need, some research has been undertaken into the quantity and nature of unmet legal need on a more local or discrete basis<sup>256</sup>. Research projects include:

- The Access to Justice and Legal Needs Program of the Law and Justice Foundation of New South Wales<sup>257</sup>. The objectives of this comprehensive research program are to examine, amongst other things, the ability of disadvantaged people to obtain legal assistance and participate effectively in the legal system. It comprises both quantitative data collection and qualitative research. Individual qualitative reports on legal needs of

256 See Mary Anne Noone, 'Access to Justice Research in Australia' in 31(1) *Alternative Law Journal* (March 2006) at 30, which lists some of the legal needs studies undertaken in Australia. The article notes the Senate Legal and Constitutional References Committee's observations on the absence of this data in both its 1998 and 2004 Inquiries into access to justice and legal aid.

257 See *Access to Justice and Legal Needs Program* at the Law and Justice Foundation of NSW at [www.lawfoundation.net.au/ljf/app/&id=7DEAF659D49F9B3ACA25717200833D5B](http://www.lawfoundation.net.au/ljf/app/&id=7DEAF659D49F9B3ACA25717200833D5B)



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identified groups of disadvantaged persons have been published, including the legal needs of older people, homeless people, people with a mental illness, prisoners and recently-released prisoners. While NSW-specific, it is likely that the reports will have relevance across Australia.

- Law for All: An Analysis of Legal Needs in Inner Sydney Today is a study by four inner city CLCs in Sydney (Redfern Legal Centre, Inner City Legal Centre, Marrickville Legal Centre and Kingsford Legal Centre)<sup>258</sup>. The reports published in 2000 and 2005 examine the legal needs of the Inner Sydney region and include analysis of demographic and qualitative data based on surveys and interviews.
- Studies about legal needs have been undertaken or are underway in other regions of Australia including Tennant Creek, the NT<sup>259</sup>, Cape York and Queensland<sup>260</sup>. The results of all of these surveys will provide a clearer picture of areas of unmet legal need and will be useful in focusing future pro bono efforts.

Recently published findings from the Law and Justice Foundation of NSW program mentioned above indicate that many individuals do not use the legal system to solve their legal issues<sup>261</sup>. In some parts of NSW, legal advisers and private lawyers were used in only 12% of cases where legal assistance was sought. In three-quarters of cases where help was sought, only non-legal advisers were approached. These included friends, family, and non-legal professionals working in medical, health, counseling, welfare, government, trade union, accounting, insurance, school and policing settings<sup>262</sup>.

Legal needs vary according to region. And as the above research from the Law and Justice Foundation of New South Wales indicates, even if a list of the unmet legal needs for any particular region were compiled, this would not necessarily assist people to recognise that a legal response is available to a problem, nor ensure that people would seek legal assistance from a legal service provider.

In reality, however, it is the funds available to frontline legal service providers such as legal aid commissions and CLCs that dictate the extent to which community need can be met. In this respect services are ‘availability’ driven rather than need

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258 *Law for All* 1<sup>st</sup> edition 2000 and 2<sup>nd</sup> edition, 2005, published by the 4 community legal centres, available at [www.rlc.org.au/community/community.html](http://www.rlc.org.au/community/community.html)

259 Gordon Renouf, *Justice Too Far Away – Report of the Tennant Creek Regional Legal Access Project* at [www.nt.gov.au/ntlac/our\\_services/TCReport.pdf](http://www.nt.gov.au/ntlac/our_services/TCReport.pdf)

260 See *Northern Outreach – A Client Needs Survey of Aboriginal and Torres Strait Islander Communities in Cape York Peninsula and the Gulf of Carpentaria* by Legal Aid Queensland at [www.legalaid.qld.gov.au/gateway.asp?c=publications](http://www.legalaid.qld.gov.au/gateway.asp?c=publications)

261 See Access to Justice and Legal Needs Program at [www.lawfoundation.net.au/](http://www.lawfoundation.net.au/)

262 Christine Coumarelos, Zhigang Wei, Albert Z. Zhou, *Justice Made to Measure, NSW Legal Needs Survey in Disadvantaged Areas* (March 2006), available at [www.lawfoundation.net.au/](http://www.lawfoundation.net.au/)

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driven<sup>263</sup> as providers are forced to prioritise, reducing or rationing grants of legal aid to areas where assistance may be available.

### **Needs analysis**

A theme that emerged at the First National Pro Bono Conference and then taken up in the *Task Force Report* Action Plan was the need for empirical research into client needs and knowledge about how to access pro bono legal services<sup>264</sup>.

From its consultations with law firms, the Centre is aware that they are very interested in needs analysis material to assist them to properly structure, design or amend their pro bono practices, a sentiment also noted in the *Task Force Report*<sup>265</sup>. Certainly, firms with structured pro bono programs note the challenge of identifying and meeting the unmet needs of clients<sup>266</sup>.

The *2004 Senate Report*<sup>267</sup> also recommended that CLCs, clearing houses and other pro bono services be provided with funding to allow them to collect detailed information on community need for legal services<sup>268</sup>. A comprehensive empirical study on legal need may encourage and assist pro bono providers to align and articulate service provision more closely with demand and need. It is likely that such a study would also assist front-line service providers (such as legal aid commissions, CLCs, ILOs as well as courts and tribunals) to think about how pro bono service providers may be able to more effectively and efficiently meet client needs.

### **Identifying need**

In the absence of national and publicly available and comprehensive data about unmet legal needs, and recognising the mismatch between unmet legal needs and the capacity and expertise of pro bono providers, there are perhaps other practical ways in which pro bono lawyers can develop strategies to identify unmet legal need and source pro bono work.

Pro bono lawyers interested in sourcing work where there is a greater chance to address unmet legal need can consider:

- registering themselves to work with the available pro bono referral schemes (such as public interest law clearing houses, law society or bar association pro bono schemes or court-based pro bono schemes) – see

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263 National Legal Aid, Submission to the Senate Inquiry into Legal Aid and Access to Justice, available at [www.nla.aust.net.au/pdf/SenInq-accesstojustice.pdf](http://www.nla.aust.net.au/pdf/SenInq-accesstojustice.pdf) at 7.

264 *Task Force Report* at 26.

265 *ibid.*

266 For example, Blake Dawson Waldron, *Pro Bono Annual Report 2004–05*, at 2.

267 Senate Inquiry into Access to Justice, Final Report, June 2004.

268 *ibid.*, Recommendation 50.

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- [www.nationalprobono.org.au](http://www.nationalprobono.org.au) for a list;
- working closely and/or developing partnerships and relationships with community organisations and other bodies that have regular contact with disadvantaged clients and/or communities and who are well-placed to identify current and local need;
- publicising availability for pro bono matters to courts, tribunals and other complaint-handling bodies such as alternative dispute resolution schemes;
- working with, or observing service delivery gaps identified by other publicly funded legal organisations such as legal aid commissions. For example, the Legal Aid Commission of NSW's most recent Annual Report identifies high levels of unmet legal need for civil law services among Aboriginal communities<sup>269</sup>.

It is the Centre's experience that the strategy and process of developing relationships with community organisations, including CLCs and ILOs, is one of the best ways of ensuring that pro bono resources are directed towards areas of greatest unmet legal need. This is often more effective than developing a program independently, as these organisations have direct experience and knowledge of the issues affecting their clients, and can identify where there is unmet need for which pro bono assistance is suitable<sup>270</sup>.

### 6.4 Community Legal Centres (CLCs)

CLCs provide free referrals, advice and assistance to more than 350,000 people each year and are increasingly the first port of call for people who are not entitled to legal aid assistance or cannot afford a private lawyer. Importantly, CLCs have started to make greater use of pro bono resources both for themselves and their clients and ongoing partnerships have developed between some CLCs and particular firms.

Most CLCs are either generalist centres that provide services to their local areas within defined geographical boundaries, or specialist centres that provide assistance to a particular client group or in a particular area of law. CLCs are close to the community and are a good measure of legal need, both local and systemic, based on demand for their services.

The number of CLCs in Australia has increased from 125 in 1994<sup>271</sup> to 214 in August 2005<sup>272</sup>. A feature of the development of CLCs is the increased number of specialist centres that provide assistance to a particular client group or in a particular area

269 Legal Aid Commission of NSW *Annual Report 2004–2005* at 3.

270 Pauline Spencer, 'Hasten Slowly', *Law Institute Journal* (2005) 80 No 2 at 87.

271 Access to Justice, Community Legal Centres and the Federal Budget 1994-1995, NACLC, March 1994.

272 [www.naclc.org.au](http://www.naclc.org.au)

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of law, usually reflecting areas of high need. There are, for example, CLCs that specialise in immigration law, disability discrimination and consumer credit and those that offer services targeted to the particular legal needs of women, young people or tenants. Many generalist centres may in addition be funded to operate a specialist service, for example, advising parents liable to pay child support, or providing a local tenancy advice service.

Many CLCs involve pro bono lawyers and law students in their service provision. The National Association of Community Legal Centres (NACLC) reported in its funding submission to the Commonwealth Government that in 2002/03 its 3,560 volunteers made an in kind contribution of \$21.5 million<sup>273</sup>. In 2005, Kingsford Legal Centre in Sydney calculated the monetary value of their 46 volunteers at up to \$412,620 and their 8 volunteer solicitors supporting the weekly employment law advice sessions at \$15,600 – a total estimate of more than \$430,000 a year<sup>274</sup>. Marrickville Legal Centre estimates the value of its 62 volunteer solicitors leverages up to \$470,000 a year<sup>275</sup>. The Inner City Legal Centre estimates the financial value of the total volunteer contribution (solicitors and students) at more than \$248,270 a year<sup>276</sup>.

Apart from volunteering, pro bono assistance to CLCs has broadened to cover a range of multi-tiered relationships which include both legal and non-legal services. Firms provide advice on issues such as governance and taxation and increasingly are willing to assist CLCs with their law reform and policy activities. Law firms are finding that drafting law reform submissions or undertaking detailed legal research for a CLC is a valued and convenient way to provide pro bono assistance.

CLCs play an important role in identifying legal issues that impinge on their client groups. Through the experience of their advice and casework services, CLCs acquire knowledge about the way in which the law or the absence of law affects the lives of their disadvantaged clients. CLCs are in a position to use this information to provide advice to government on policy development and to work towards improvements in laws and the administration of the legal system through activities such as participating in advisory councils, writing law reform submissions and lobbying government. The law reform and policy initiatives undertaken by CLCs can deal with the cause of legal problems, rather than the effect of those problems on individual clients.

As mentioned above at 3.2, law firms are now also exploring co-counselling arrangements for litigious matters.

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273 *Community Legal Centres – An investment in value*, October 2003. at [www.naclc.org.au](http://www.naclc.org.au)

274 *Law for All*, 2<sup>nd</sup> Edition, April 2005 at 31.

275 *ibid* at 36.

276 *ibid* at 27.

### 6.5 Legal Aid

Each State and Territory in Australia has a Legal Aid Commission (LAC). LACs are key agencies through which legal services are provided to low income and socially disadvantaged people. Demand for pro bono services is inescapably tied to LAC and other publicly funded legal service providers because clients in areas of need that are not serviced or are severely restricted by legal aid or CLCs, may turn to pro bono providers for assistance.

Because laws, legal practices, guidelines and funding to Commissions vary across jurisdictions, each Commission offers different services and assistance. Many are means and merit tested. Even where legal aid is available, a client may have to pay a contribution towards the costs of legal services. This may be a small amount or up to the total cost of the matter, if the applicant has the capacity to pay by reason, for example, of recovery of money.

Commissions provide a range of services. They can grant aid for legal representation for ongoing matters. If a grant of aid is made it will be referred to either a private practitioner or a lawyer from the Commission's in-house practice. Aid may also be granted if the applicant has special circumstances which include language or literacy problems, intellectual, psychiatric or physical disabilities, if the applicant lives in a remote location or if, in relation to family law matters, there is a likelihood of domestic violence.

The following services are generally provided free of charge and without means testing although there are variations from state to state.

- Legal information and referral services – the provision of initial legal information and referrals to appropriate services. Information and referral is provided face to face and by telephone. If appropriate, written information may be sent to people or accessed by them via each Commission's website.
- Advice and minor assistance – some commissions operate telephone services that extend beyond the provision of information and referral to the provision of legal advice. Face-to-face legal advice is also offered. Most commissions also provide additional assistance, for example, help in drafting a letter or completing a form.
- Duty lawyer – duty lawyers are available at many magistrates' and children's courts to provide advice and to assist clients with restraint orders, to seek remands, apply for bail and/or present pleas in mitigation.

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There are a number of implications for pro bono arising from legal aid policies and practices. In particular:

- The legal aid means test may result in applications for aid being rejected even though unsuccessful applicants may not have sufficient funds to pay a lawyer and their case may have merit. These people then approach pro bono providers seeking assistance. The majority of people who are eligible for legal aid are people in receipt of social security pensions or benefits. There are many other people who are financially ineligible for legal aid who are in need of legal assistance.
- The biggest gap in legal aid coverage is in civil law where it is difficult, if not impossible, to get a grant of aid for many kinds of cases. There are also many people involved in family law proceedings who are not eligible for legal aid or whose proceedings have been so lengthy that their grant is exhausted. These people then approach pro bono providers seeking assistance.
- Some jurisdictions have costs indemnity provisions with regard to legally aided persons<sup>277</sup>. An issue is whether and how persons represented pro bono should enjoy the benefit of these costs indemnity provisions.

The Australian Law Reform Commission reported that the reduction of Commonwealth funding of legal aid and the resulting changes in eligibility guidelines and reductions in grants of legal aid have led to a noticeable exit from legal aid work by private practitioners<sup>278</sup>. This is reflected in National Legal Aid's submission to the 2003 Senate Inquiry into Legal Aid and Access to Justice<sup>279</sup>. It is likely that the declining levels of legal aid and gaps in legal aid services have increased the demand for the private profession to provide services on a pro bono basis.

There is some disquiet that the increased use of pro bono reflects a slide back to the charity model of dealing with legal issues affecting disadvantaged people. This is antithetical to a modern system of legal aid and has led critics to suggest that despite its best intentions not to be a substitute for legal aid, pro bono 'has the potential to in fact undermine if not gradually supplant the statutory provision of Legal Aid'<sup>280</sup>.

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277 For example, *Legal Aid Commission Act 1979* (NSW) s.47.

278 Australian Law Reform Commission, *Managing Justice – A Review of the Federal Civil Justice System* Report No.89 (January 2000).

279 Submission at [www.nla.aust.net.au/pdf/SenInq-accessstojustice.pdf](http://www.nla.aust.net.au/pdf/SenInq-accessstojustice.pdf) at 20.

280 S Biondo, C Field, 'Legal Aid in the 1990s – The Slide Back to Charity', in (1996) 8 *Just Policy* 39, Victorian Council of Social Services. See also Fitzroy Legal Centre's Submission to the *Senate Report 2004*.

### 6.6 Indigenous legal services

There are more than 50 Indigenous legal organisations (ILOs) in Australia, including Aboriginal and Torres Strait Islander Legal Services (ATSILS), 26 family violence prevention legal services (FVPLSs)<sup>281</sup>, and at least eight specialist Indigenous women’s legal services<sup>282</sup>. Seventeen organisations have been determined to operate as representative bodies (known as Native Title Representative Bodies or Native Title Service Delivery Agencies) under the *Native Title Act 1993* (Cth) which include two land councils established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (NT)<sup>283</sup>.

Until 30 June 2004, most ILOs providing Indigenous Australians with free legal advice and representation were funded by the Aboriginal and Torres Strait Islander Services (ATSIS). However, following the Commonwealth government’s abolition of ATSIC, new arrangements for administering Indigenous affairs were implemented, and both ATSILS and FVPLS are now funded and administered through the Commonwealth Attorney-General’s Department<sup>284</sup>.

Indigenous legal aid services are provided in accordance with priorities laid down in the Policy Framework (for grantees) and the Policy Directions (for contractors). The funding arrangement for providing these services has been progressively changed to contractual relationships through a competitive tender process. Under these new tender arrangements there are now nine providers for Aboriginal and Torres Strait Islander legal services, with one or two providers in each State and the Northern Territory. ACT services fall under the newly incorporated Aboriginal Legal Services (NSW/ACT) Limited. Information about the providers is available from the Indigenous Law and Justice Branch of the Indigenous Justice and Legal Assistance Division of the Attorney-General’s Department<sup>285</sup>.

To date, assistance provided by ILOs has not been means tested and every Aboriginal and Torres Strait Islander person is eligible for assistance. Nevertheless, the great majority of clients are in receipt of some form of government assistance. Most ILOs provide legal advice on a ‘drop-in’ basis and many have twenty-four-hour telephone advice services for criminal matters.

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281 For a full contact list of ATSILS and FVPLS see [www.ag.gov.au/agd/WWW/agdHome.nsf/Page/Portfolio](http://www.ag.gov.au/agd/WWW/agdHome.nsf/Page/Portfolio) and go to Indigenous Law and Justice Branch under Legal Aid.

282 See the National Network of Indigenous Women’s Legal Services at [www.nniwls.org.au/index.html](http://www.nniwls.org.au/index.html)

283 See [www.ntrb.net/](http://www.ntrb.net/)

284 See [www.atsic.gov.au/ATSIC\\_ATSIS\\_Closure/Default.asp](http://www.atsic.gov.au/ATSIC_ATSIS_Closure/Default.asp)

285 See [www.ag.gov.au/agd/WWW/agdHome.nsf/Page/RWBP8A6CB77281269A7CA25704C001A561A](http://www.ag.gov.au/agd/WWW/agdHome.nsf/Page/RWBP8A6CB77281269A7CA25704C001A561A)



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### ***Unmet legal needs of Indigenous Australians***

The main demand for legal services for Aboriginal people is in criminal and family law where pro bono lawyers generally are unable, or unwilling to help. Research by the Law and Justice Foundation of NSW into access to justice and unmet legal needs has found Indigenous Australians particularly vulnerable to credit and debt, employment and family law problems. These problems are of particular concern given that they tend to be longer lasting, more difficult to resolve and are likely to trigger further problems<sup>286</sup>.

There is also evidence that Indigenous Australians are relatively less likely to seek advice to resolve their legal issues. Some possible reasons are a distrust of the legal system, an aversion to the formality of court processes, a perception of lack of cultural awareness, sensitivity and compassion among legal service providers and real or perceived bias or discrimination against Indigenous people in some legal processes<sup>287</sup>.

Pro bono services to Indigenous Australians living in regional or remote areas are likely to be limited by the fact that smaller solicitor practices in rural areas may not have additional capacity to assist. Larger firms are geographically isolated from Indigenous clients and services and, without training, are unlikely to have expertise in the areas of legal need and appropriate cultural sensitivity necessary for effective delivery of legal services. ILOs also know little about the availability of pro bono assistance, let alone the availability of, or access to, publicly funded legal services.

### ***Pro bono assistance and responses***

Several law firms have made assistance to Indigenous Australians a priority. Firms with a long-standing commitment include Blake Dawson Waldron, Arnold Bloch Leibler and Gilbert+Tobin, while others such as Allens Arthur Robinson are developing and expanding their pro bono commitment in this area. Undoubtedly there are others.

Some specific examples of the kinds of pro bono assistance provided to ILOs and their clients include:

- Secondment of lawyers to the North Australian Aboriginal Justice Agency (Katherine) by Blake Dawson Waldron to provide civil law advice and assistance; and until 2005, secondment of solicitors to the Aboriginal Legal Service in Sydney<sup>288</sup>.

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286 Christine Coumarelos, Zhigang Wei, Albert Z Zhou, *Justice Made to Measure, NSW Legal Needs Survey in Disadvantaged Areas* (March 2006), available at [www.lawfoundation.net.au/](http://www.lawfoundation.net.au/) at 209-211.

287 *ibid*, at 209, referring to public consultations conducted by the LJF in 2003.

288 Previously known as Sydney Regional Aboriginal Corporation Legal Service (SRACLS).

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- Allens Arthur Robison fund an Indigenous lawyer at the Public Interest Advocacy Centre (PIAC) in Sydney as part of their Indigenous Justice Project. This was initiated in 2001 and has strengthened PIAC's links with Indigenous organisations and identified public interest issues that impact on Indigenous people and communities. PIAC have conducted public interest advocacy, litigation and policy work on behalf of Indigenous clients<sup>289</sup>.
- Arnold Bloch Leibler has provided long term and ongoing pro bono legal support to the Yorta Yorta people. This has included litigation support for their native title claim to the High Court.
- As part of their Wills Project, Blake Dawson Waldron are drafting wills (i) for Aboriginal people in NSW who have been, or are to be compensated for 'stolen wages' and (ii) for traditional land owners in the Kimberley region in Western Australia who have received royalties from a mine on their traditional land.

While it may be unrealistic to expect pro bono services to make a significant difference to the level of unmet need in Indigenous communities, there are opportunities for creative partnerships between pro bono service providers and ILOs. Useful forms of assistance include providing funded positions and/or secondees, access to precedents and library resources, specialist advice and training, support for in-house litigation and provision of advice both directly to the ILOs (eg. in employment law, insurance law) and to clients<sup>290</sup>.

The Centre is currently working on an Information Paper which will collate what is known about the provision of pro bono legal services to Indigenous Australians.

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289 See [www.aar.com.au/about/compj.htm](http://www.aar.com.au/about/compj.htm)

290 Research undertaken by NPBRC: [www.aph.gov.au/senate/committee/legcon\\_ctee/legalaidjustice/submissions/sublist/htm](http://www.aph.gov.au/senate/committee/legcon_ctee/legalaidjustice/submissions/sublist/htm) and the Senate Select Committee on the Administration of Indigenous Affairs at [www.aph.gov.au/Senate/committee/indigenouaffairs\\_ctte](http://www.aph.gov.au/Senate/committee/indigenouaffairs_ctte)

## 7 Constraints on pro bono service delivery

### 7.1 Introduction

In the course of the general activities of the Centre and in gathering information for this Report, the following issues have been raised as factors which possibly reduce or constrain the ability of private profession lawyers to deliver pro bono legal services. Knowledge of these constraints is an important part of the landscape and the Centre and other agencies have produced resources and undertaken research and activities to address some of them.

### 7.2 Government responsibility to provide legal services

Governments bear the ultimate responsibility for vulnerable Australians who need access to legal advice and representation. Pro bono exists alongside the services funded by government and, in the overall scheme, provides only a small proportion of the legal services delivered to low income and socially disadvantaged people.

Pro bono is a limited resource and in areas of legal need where pro bono help is difficult to obtain - such as criminal law and family law – pro bono services are not likely to increase dramatically as many private lawyers take the view these areas should be covered by government funded legal services.

CLCs have commented on the sometimes inappropriate incursion of pro bono into areas which are properly the responsibility of government. They suggest that a stronger commitment by government to funding legal aid and CLCs would result in less cynicism in the profession and elsewhere, and encourage greater commitment to pro bono – that is, government investment in legal aid is very likely to leverage a significant contribution from the profession<sup>291</sup>. And there is evidence to suggest that if the function and/or nature of CLCs changed significantly (for example, if the government introduced competitive tendering for CLCs or if there were changes to CLC activities, funding, clients and philosophy), a proportion of private lawyers would consider no longer volunteering at CLCs<sup>292</sup>.

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291 National Association of Community Legal Centres, *Doing Justice: Acting together to make a difference*, at 15.

292 R Melville, *My Time is Not a Gift to Government: An Exploratory Study of NSW Community Legal Centre Volunteers* (University of Wollongong, 2002) at 45.

### 7.3 Mismatch of skills

A commonly identified barrier to pro bono is the mismatch between the skills and knowledge of pro bono lawyers and the expertise and services typically required by pro bono clients. Most lawyers have a range of generalist and generic skills that can be put to use in the interests of disadvantaged clients. However, where there is a mismatch of specific skills and/or unfamiliarity with or reluctance to address particular areas of law, training becomes necessary.

Few commercial law firms have expertise in ‘community law’ such as social security law, consumer credit law, migration law, criminal or family law. Yet these are key areas of significant unmet demand for legal assistance, particularly in rural, regional and remote areas. Given the reasonable concerns about work for which they do not have expertise and/or are unable to properly supervise, it is not surprising that firms are reluctant to take on these matters unless they have some training or there are particular schemes in place which provide training and which address professional liability issues.

In the larger firms where the potential exists for expansion of pro bono programs, this skills deficit and, in some cases, a reluctance to accept instructions in matters involving significant levels of litigation, are key reasons why pro bono services are unlikely to make any significant dent in the demand for publicly funded legal services in key areas of need.

Some firms organise training to enable lawyers to take on matters where there is a clear demand for assistance and no relevant expertise. For example, when Blake Dawson Waldron set up their pro bono program, they surveyed CLCs, Aboriginal legal services and legal aid lawyers on the gaps in legal services for disadvantaged people in the community. One identified area was apprehended violence orders (AVOs), particularly for people outside the legal aid means test. Recognising there was no skills base in AVOs within the firm, BDW set about training their own lawyers as well as lawyers from other firms, to act in AVO matters. The firm has now acted in defended AVO matters in the Local Court and appeals to the District Court in Sydney and has participated in Women’s Domestic Violence Court Assistance Schemes (WDVCAS) in local courts. Other firms that undertook training participate in WDVCAS in various local courts. Expertise developed in this area has also enabled firms to be involved in law reform work around AVOs.

Training is often conducted in partnership with legal aid bodies or CLCs. For example, another area of unmet legal need is in the area of victim compensation (VC matters). CLCs are often overwhelmed with the volume of these sometimes complex matters. To help meet the need, Marrickville CLC and Clayton Utz ran training in VC matters

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for a number of firms who now undertake these matters in-house.

There are clear benefits from this kind of cross-sector training. Apart from increasing lawyers' skill base and job satisfaction, training and information-sharing create expertise which others can call upon, and which can be used not only to assist individual clients but in law reform initiatives aimed at systemic change.

Another approach to address the skills or expertise mismatch is that adopted by QPILCH in Brisbane. QPILCH has set up 'panels' in family law, discrimination law and guardianship and administration matters (GAAT). The discrimination and GAAT panels include lawyers who will accept referrals in these areas and the family law panel has been established primarily as a point of advice for CLC lawyers who need access to family law expertise. In the case of the family law panel, QPILCH will put the CLC in touch with a panel firm who can give discrete advice to the CLC. It is then up to the firm whether it will accept a referral. This 'discrete task assistance' is a useful way to share expertise and help the CLC's disadvantaged clients.

### 7.4 Conflicts of interest

Firms can have legal and commercial conflicts that act as barriers to taking on particular matters on a pro bono basis. Management of these conflicts presents a challenge for firms and can mean that the firm declines to take on the work.

Conflicts of interest may be:

- legal conflicts;
- 'indirect' or 'commercial' conflicts/potential commercial conflicts;
- non-legal or non-commercial conflicts where the matter is viewed as prohibitively controversial.

The areas in which conflicts of interest are likely to arise vary according to the size and location of the legal practice but can include immigration, family law, professional negligence matters (against doctors and lawyers) and matters against banks as well as mining and insurance companies. There is also evidence that conflicts may pose a particular problem in rural, regional and remote areas where there are fewer practitioners available to take on pro bono matters.

Many firms have identified conflicts as a particular issue when asked to provide pro bono assistance in matters against government – at local, state and commonwealth levels. The Centre, in consultation with the profession, has advocated for the Federal and State governments to introduce a Conflicts Protocol (the Protocol)<sup>293</sup> designed to minimise the perception that lawyers undertaking pro bono work against government may be prejudiced in securing government legal work.

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293 See Information paper and proposed protocol at [www.nationalprobono.org.au/publications](http://www.nationalprobono.org.au/publications)

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In response to the Centre's submissions, most Attorneys-General formally agreed that legal service providers should, subject to avoiding direct legal conflicts, be given the same level of consideration in relation to the provision of tender bids for legal services, whether or not those lawyers have acted pro bono for clients against Government.

The Commonwealth Attorney-General had been considering implementation of the Protocol in the Office of the Legal Services Commission's review of the Legal Services Directions<sup>294</sup> (the LSD) that set out the framework and requirements for the performance of Commonwealth legal services. Regrettably, the Commonwealth failed to adopt or implement the Protocol in the new LSD which came into force in April 2006. The Centre is continuing to advocate for the adoption of the Protocol as the perception of prejudice persists as a live issue for the profession.

At a State/Territory level, at least four jurisdictions have proposed action. The Victorian Department of Justice has consulted stakeholders in relation to a proposal to incorporate a form of the Protocol into the Government Legal Services Panel Contract. However at the end of 2006 no government had implemented any firm direction, policy or other instrument to address the issue<sup>295</sup>.

### 7.5 Litigation & procedure

Litigation has unique characteristics that present challenges to obtaining pro bono assistance.

#### ***The uncertainty as to size and scope***

Unlike advice, transactional, drafting or training assistance, the size and scope of litigation is particularly difficult to estimate. This means that lawyers may be unwilling to consider litigation if the impact on their budgets and resources seems open-ended. This can adversely affect the management of a law firm's pro bono program as most programs are managed on the basis of a commitment by the partners to an annual pro bono budget. Open-ended liability is especially prohibitive in the case of smaller law firms and rural and regionally-based lawyers, who are already struggling to run their businesses.

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294 Made under the *Judiciary Act 1903*.

295 See report at [esvc000464.wic006u.server-web.com/documents/AGprotocolResponses.doc](http://esvc000464.wic006u.server-web.com/documents/AGprotocolResponses.doc)

***Lengthy litigation is prohibitive***

The case of *Mallard*<sup>296</sup> in WA involved over 25 days of hearing before the Criminal Court of Appeal of Western Australia and the High Court. It was the single largest pro bono case ever undertaken by Clayton Utz with their lawyers spending over 3,000 hours on the matter. The firm became involved at the Criminal Court of Appeal stage with the strong belief that the application would be successful and they could therefore accommodate the resources required. However, the application was not successful in the Court of Appeal and they then pursued a special leave application and High Court hearing before they were ultimately successful<sup>297</sup>. Accordingly, a lot more time was spent on this matter than was originally anticipated, restricting the firm’s ability to undertake other pro bono work in WA.

It appears that there must be a strong public interest for firms to take on lengthy litigation.

***Complexity***

Firms with pro bono practices, CLCs and referral agencies all note the difficulty of finding pro bono assistance for complex or lengthy litigation. This is exacerbated where the matter has progressed some way into the litigation process without legal assistance, or with a fractured history of legal assistance. It is a particular problem in some contested family law matters. The resource implications of committing to these kinds of matters often make it difficult for pro bono assistance to be obtained.

***Late requests for assistance***

Taking on pro bono litigation within a tight timeframe can be difficult and risky. Amongst other things, there is limited time to assess merits and determine strategies and ascertain whether other relevant documents might exist. For counsel, being confronted with such matters is not unusual but without the ongoing support of a firm of solicitors it is difficult for counsel to continue to act. Also the eleventh hour factor makes it difficult for firms who have to juggle existing commitments. Even large firms have a limited capacity to act at short notice.

A report on pro bono legal services in Western Sydney highlighted the assistance that could be afforded to pro bono lawyers by the courts. One respondent suggested that courts could afford some indulgence in terms of procedure: “Don’t be quite so critical if the documents aren’t quite so good because the person only came in the

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296 *Mallard v The Queen* [2003] WASCA 296 and *Mallard v The Queen* [2005] HCA 68.  
297 Late in the matter, \$132,000 was made available as an ex-gratia payment from the Federal Attorney-General’s Department to cover counsel’s fees for the High Court appeal. However the solicitors’ pro bono contribution was vast and not reimbursed. Counsel also spent hundreds of pro bono hours on the matter in the Court of Appeal.



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instant before the hearing, for example”<sup>298</sup>. Another lawyer surveyed for the report commented that when he takes pro bono cases in his local court, he announces that he is doing the matter on a pro bono basis in the hope that fellow practitioners and the court may afford him some leniency “... not in relation to justice but advantage in relation to time”<sup>299</sup>.

A Public Interest Law Clearing House (PILCH) or other referral scheme may have the capacity to do the job of sorting out the documents. However there is still the issue of ‘missing’ information such as court dates and filed documents. Current rules pertaining to access to documents from tribunal and court registries can make it difficult for referral schemes to obtain copies of these documents and previous orders. Some courts have copying and access fees and require someone to attend to make copies. Also the dependence on other parties to produce relevant documents, be they solicitors for the other side or supporters of the litigants (such as in the migration law area), can create delays and difficulties.

### ***Professional misconduct or an adverse costs order***

Under the *Legal Profession Act 2004* (NSW), the provision of legal services or lodgment of court documentation without reasonable prospects of success may constitute professional misconduct<sup>300</sup>.

Under recent amendments to the *Migration Act 1958* (Cth) a lawyer must not file a document commencing proceedings unless he or she certifies that the matter has a reasonable prospect of success<sup>301</sup>. Also, a lawyer who encourages a party to commence or continue migration litigation, without giving proper consideration to whether a matter has a reasonable prospect of success, may have a personal costs order made against them for all of the costs incurred by the party for the time that the lawyer acts in the matter<sup>302</sup>.

The Senate Inquiry into the amending legislation to the *Migration Act* was of the view that these provisions would provide a disincentive for lawyers to take on pro bono matters<sup>303</sup>.

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298 Gillian McAllister and Tom Altobelli, *Pro bono legal services in Western Sydney* (November 2005) University of Western Sydney and the Law and Justice Foundation of NSW at 27. Available at [www.nationalprobono.org.au](http://www.nationalprobono.org.au)

299 *ibid.*

300 S.347 *Legal Profession Act 2004* (NSW).

301 S.486I *Migration Act 1958*.

302 *ibid.* s. 486E and F.

303 Legal and Constitutional Affairs Committee, *Provisions of the Migration Litigation Reform Bill 2005*, at para 3.57, viewed at [www.aph.gov.au/senate/committee/legcon\\_ctte/mig\\_litigation/report/c03.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/mig_litigation/report/c03.htm)

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### **Disbursement assistance**

The cost of disbursements and the procedures for applying for disbursement funding can act as a barrier to various forms of pro bono activity, in particular more complex litigation in higher courts. Disbursements may include the cost of obtaining expert reports or transcripts of proceedings and the cost of counsel and interpreter fees. Some pro bono schemes have reported that the prohibitive costs of obtaining court transcripts can limit the availability or willingness of barristers, for example, to give an advice on the merits of proceeding with an appeal.

Funding schemes exist in many State jurisdictions to provide disbursement assistance to litigants in some areas of civil litigation. However, the availability of funding is limited, application for assistance can sometimes only be made after the disbursement cost has been incurred, the funds apply application fees, means and merits tests and assistance can be limited to cases involving the likelihood of recovering damages<sup>304</sup>. Much pro bono litigation is *not* seeking an order for damages.

Most schemes have been established as litigation lending models without any policy view to supporting pro bono litigation. The report on pro bono legal services in Western Sydney suggested that disbursement assistance will not make a significant difference to the capacity of smaller firms to take on less-complex litigation matters in local courts or tribunals<sup>305</sup>. None of the solicitors surveyed regularly drew on disbursement assistance schemes because the levels of disbursements incurred were not significant for the type of work they did. Several lawyers also referred to the prohibitive administrative burden of applying and accounting for the disbursement assistance<sup>306</sup>.

The cost of filing fees has also been identified as a constraint on providing pro bono litigation services. However, exemptions or waivers are available in respect of many court or tribunal fees, including exemption from setting down or daily hearing fees. The PILCH schemes of Victoria, Queensland and New South Wales have each produced fee waiver and exemption guides for their respective state courts and tribunals, as well as federal courts and tribunals. The resources have been developed to assist pro bono lawyers identify fee exemption and waiver provisions and to access the relevant application forms<sup>307</sup>.

.....  
304 Details of the various State and Territory based disbursement assistance schemes are contained in the *Pro Bono Manual* at [www.nationalprobono.org.au/probonomanual/ProBono\\_Manual\\_04.htm#5](http://www.nationalprobono.org.au/probonomanual/ProBono_Manual_04.htm#5)

305 Gillian McAllister and Tom Altobelli, *Pro bono legal services in Western Sydney* (November 2005) University of Western Sydney and the Law and Justice Foundation of NSW at p 25. Available at [www.nationalprobono.org.au/publications/other](http://www.nationalprobono.org.au/publications/other)

306 *ibid.*

307 Links to these guides can be found at [www.nationalprobono.org.au/publications/legalguide/index.html](http://www.nationalprobono.org.au/publications/legalguide/index.html)

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Pro bono activity that needs disbursement support is a concern that the Centre intends to research further. Some of the emerging issues include:

- greater inter-professional cooperation is one way that expert report costs might be met. This is a real challenge but there may be scope for reciprocal arrangements<sup>308</sup>;
- the need for funds to be flexible enough to suit different needs and circumstances;
- addressing cross-jurisdictional access issues. For example, NSW-based firms would be more likely to assist pro bono clients in another jurisdiction if they could more readily access that other jurisdiction's disbursement fund (if such a fund exists).

### **Costs recovery**

The possibility of an adverse costs order may deter litigants and their legal representatives from enforcing their rights.

A factor which may act as a disincentive to taking on pro bono matters is the lack of clarity about whether a lawyer is able to recover costs in matters that are successfully litigated. Party-party costs are awarded as an indemnity, and as such, there must be a liability to costs for the client for a costs order to be made<sup>309</sup>. To preserve the entitlement for recovery of such costs, and provide more of a level playing field for settlement negotiations, many pro bono lawyers include a provision in their retainer for recovery of costs, should such entitlement be obtained<sup>310</sup>.

A recent decision of the NSW Court of Appeal in the long running matter of *Wentworth v Rogers*<sup>311</sup> seems to endorse the position that the indemnity principle does not abrogate the use of such provisions to underpin a costs order in favour of the party who has been acted for 'pro bono' and that costs can be recovered from the client.

.....  
308 The Centre notes that other professionals are embracing the pro bono ethic. The Australian Medical Association (NSW) Ltd maintain a database of practitioners who may be willing to volunteer their services to occasionally provide free medical opinion and reports via the NSW Law Society pro bono scheme. See, also, the not-for-profit organisation 'Architects for Peace' at [www.architectsforpeace.org/](http://www.architectsforpeace.org/) who consider that professionals within the reach of their organisation should "assist in the creation of more democratic, fair and better cities for all, wherever we are based." See also 'Architects and pro bono' in *PILCH Matters*, Issue 8, March 2006 at 4, available at [www.pilch.org.au/](http://www.pilch.org.au/)

309 Marina Wilson, 'Preserving party-party costs in pro bono cases', in *Law Society Journal* Vol 24(9) October 2004 at 34.

310 Examples of useful costs agreements can be found in 'sample letters of engagement' in *The Australian Pro Bono Manual*, at [www.nationalprobono.org.au/probonomanual/ProBono\\_Manual\\_03.htm](http://www.nationalprobono.org.au/probonomanual/ProBono_Manual_03.htm)

311 *Wentworth v Rogers* (2006) NSWCA 145 (7 June 2006).

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As Basten JA noted<sup>312</sup>:

*“Whether the term ‘pro bono’ now extends to situations where the lawyer, satisfied that the client has a meritorious claim, nevertheless enters a speculative fee arrangement to charge a usual fee, taking some risk of non-payment, is a question of fact to be determined in the context of the particular case”.*

The *2004 Senate Report* suggested that the ineffectiveness of costs orders in pro bono matters may indirectly increase the cost of litigation<sup>313</sup>. The report noted that costs orders may be a means of sanctioning certain conduct, for example, where a litigant has unduly wasted time or raised irrelevant issues. However, in pro bono matters where a lawyer is not paid, a cost order may be less effective as a sanction.

The *2004 Senate Report* also referred to anecdotal information that suggested that some lawyers use delaying tactics against clients who are represented on a pro bono basis. Order 80 Rule 9 of the Federal Court Rules, however, allows a solicitor providing pro bono services to recover amounts where a costs order is made. There does not appear to be any similar court rule in other jurisdictions. The *2004 Senate Report* recommended that all courts consider amending their rules to allow lawyers who provide pro bono legal services to recover their costs in circumstances similar to those where litigants pay for legal representation<sup>314</sup>. The Government response to this recommendation noted that this is a matter for the courts<sup>315</sup>.

A number of pro bono organisations are advocating legislative reform in the area of costs in public interest and pro bono litigation. QPILCH, in a research paper titled *Costs in public interest proceedings in Queensland*, recommends that consideration of the public interest and whether the person has been represented pro bono be mandatory considerations when a costs order is sought<sup>316</sup>. The paper also suggests that Commonwealth and State governments should consider developing a policy where, in public interest and other pro bono matters against the Commonwealth and State agencies, they might not seek to enforce costs orders in certain matters even when these are awarded by the courts<sup>317</sup>. PILCH (Vic) is also advocating the adoption of guidelines for costs orders in public interest litigation to develop an environment more conducive to undertaking public interest casework. One of the

.....  
312 *ibid* at para 132.

313 *2004 Senate Report*, [www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/contents.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/contents.htm) at para 9.74.

314 *2004 Senate Report*, Recommendation 52, at [www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/contents.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/contents.htm)

315 Government Response to the Senate Legal and Constitutional References Committee inquiry report *Legal Aid and Access to Justice 2004*, at 29, available at [www.ag.gov.au/agd/www/Agdhome.nsf/Page/RWP2A2EFAF08AB7C28BCA2571060007E514](http://www.ag.gov.au/agd/www/Agdhome.nsf/Page/RWP2A2EFAF08AB7C28BCA2571060007E514)

316 See [www.qpilch.org.au/publications](http://www.qpilch.org.au/publications)

317 *ibid* para 5.4.3.

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arguments in favour of a non-punitive approach to costs in test case litigation is the element of general public benefit in the clarification of the law, including the benefit of certainty.

Costs are a particular barrier in test-case litigation. In the Tampa litigation in 2001, the Commonwealth government sought costs against the parties represented by pro bono lawyers. In its judgment, the Full Federal Court noted that the invaluable pro bono assistance representation ensured that the proceedings and the important questions to which they gave rise, were pursued and resolved with expedition and efficiency and so no order for costs was made – but the risk remains<sup>318</sup>.

In the spirit of pro bono, the Centre notes in its *Australian Pro Bono Manual*<sup>319</sup> that firms should consider the benefits of allocating monies received from successful pro bono litigation to their firm's pro bono budgets. Alternatively they might use them to meet disbursements in other pro bono cases or donate the monies recovered to a charity so as to remove any doubt that the matter is being conducted on a pro bono, not a 'no win no fee', basis.

### **Unmet legal need**

In 1998, the Senate Inquiry into the Australian Legal Aid System: Third Report concluded that an indicator of how well the legal aid system was working was the number of litigants who appear before the courts without legal advice or representation. Evidence at that time suggested that these numbers were increasing.

In the *2004 Senate Report*, the committee said,

*Various reports and research projects, including those by the Australian Law Reform Commission and the Family Law Council, have established a strong link between cuts to legal aid funding and the rising incidence of self-representation, particularly in the Family Court. While some individuals may choose not to have a lawyer because, for example, they perceive they will have a tactical advantage, evidence to this inquiry suggests that reduced legal aid funding is directly responsible for the lack of legal representation for many others.*<sup>320</sup>

It now seems beyond doubt that the decrease (in real terms) of funding to legal aid and CLCs has been a factor which has led to a rise in unrepresented litigants<sup>321</sup>.

Legal Aid periodically reviews guidelines and means tests and recently the NSW Legal Aid Commission announced small increases in rates for lawyers in family,

318 Black CJ and French J in *Ruddock v Vadarlis (No.2)* 115 FCR 229 at para [28].

319 *The Australian Pro Bono Manual*, edited by Jill Anderson, NPBRC and Victoria Law Foundation, 2005 at 66.

320 See [www.aph.gov.au/Senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/b01.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/b01.htm)

321 Australian Law Reform Commission Report *Managing Justice* and *2004 Senate Report* accessed at [www.aph.gov.au/Senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/b01.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/b01.htm)

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criminal and civil matters and a significant increase in the means test threshold<sup>322</sup>. The CLC reaction to tight funding has sometimes meant that they are forced to restrict the areas in which they can assist clients and to do more strategic policy work (at the expense of representing individual clients<sup>323</sup>). This puts pressure on pro bono to do more than complement publicly funded services.

### 7.6 Community service and pro bono legal services

The recent interest in corporate social responsibility has seen the development of community service programs by many corporate law firms. Community service programs may include activities such as supporting children's literacy programs and student mentoring, getting involved in a working bee at a community centre or lending a hand at a soup kitchen at a welfare organisation. One of the stated rationales of these programs is that community service programs facilitate participation in philanthropic work by the large number of firm employees who are not lawyers.

Whether the existence of both a community service and a pro bono legal assistance program does, or will, play out in a competition for lawyers' time and expertise, and result in a reduction of capacity to undertake legal work, has not been conclusively tested. However, it is clear that there is some tension and debate about how the two are being increasingly conflated. The possible constraint for pro bono legal service delivery is that a firm's resources and pro bono budget may be diverted towards community service projects, often involving no legal skills, when there is clearly increasing demand for legal assistance to help with unmet legal need<sup>324</sup>.

### 7.7 Rural, regional and remote pro bono

The relative lack of access to legal services for disadvantaged people in regional, rural and remote (RRR) areas is generally well-accepted<sup>325</sup>. According to the most recent ABS data, 79% of all solicitor practices are located in capital cities, with .....

322 Base rate for criminal and family law matters went from \$130 to \$140 an hour effective from 1 August 2006. Means test financial eligibility thresholds have risen 40% this year.

323 Sources: CLC Budget Submission to 2006/7; Submissions to NSW CLC Review.

324 Anne Cregan, 'As a law firm, how do you help?' originally published in *Living Ethics* (Autumn 2006, Issue 63), St James Ethics Centre, available at [www.nationalprobono.org.au/publications/other.html](http://www.nationalprobono.org.au/publications/other.html)

325 For recent reports and research into the relative lack of services for rural Australians see, for example, Tony Vinson, *Community adversity and resilience: the distribution of social disadvantage in Victoria and New South Wales and the mediating role of social cohesion* (The Ignatius Centre for Social Policy and Research, March 2004); Senate Legal and Constitutional References Committee Report *Inquiry into Legal Aid and Access to Justice* (June 2004) 113-136 and references to submissions available at [www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/report/contents.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/report/contents.htm) (viewed April 2006); see also Victorian Parliament Law Reform Committee *Review of Legal Services in Rural and Regional Victoria* (May 2001); see also Council of Social Services of New South Wales, *Counting the Cost: What Future for Human Services in NSW* (October 2004) available at [www.ncoss.org.au/bookshelf/rural/submissions/counting\\_the\\_cost.pdf](http://www.ncoss.org.au/bookshelf/rural/submissions/counting_the_cost.pdf); see also submissions to the Joint Commonwealth/NSW Review of Community Legal Service Funding Program, and in particular submissions by the Council of Social Services of New South Wales (NCOSS) and the Regional Rural and Remote Network of the Combined Community Legal Centre Group (Inc) NSW.

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capital city practices averaging higher returns per lawyer<sup>326</sup>. Lawyers working in RRR areas face particular challenges in delivering legal services to their clients, including geographical isolation and limited access to resources and services. There are also difficulties with inflated costs and economies of scale associated with running a (usually) small practice, as well as conflicts of interest and confidentiality issues. There is evidence that many smaller private legal practices are finding conditions harder as a result of economic difficulties in rural areas generally, and as a result of the ‘tort-reforms’ and resultant restrictions on an important traditional area of practice<sup>327</sup>.

### **Rural firm capacity to do pro bono work**

There is increasing evidence that the number of lawyers in RRR areas is either static or falling, adding pressure on those remaining (generally older) lawyers to do more pro bono work. But many rural firms, like other small firms, are already providing significant pro bono legal services and have limited capacity to provide more<sup>328</sup>. Private law firms in remoter areas may also be less able to afford to provide pro bono services because of insufficient regular, profitable work to supplement their pro bono work. As mentioned above, conflicts of interest are also more likely to occur in small practices and costs and disbursements are likely to be higher for rural pro bono clients, especially travel and telephone costs, so it is not surprising that some professional organisations resist or deflect the proposition that RRR lawyers should do more pro bono work.

### **RRR CLCs**

RRR community legal centres (CLCs) face additional barriers when trying to address the unmet needs of their communities. For example, RRR CLCs:

- usually service much larger geographical areas, often with far fewer resources and fewer staff than metropolitan CLCs;
- often don’t have the advantage of being able to refer clients to local legal aid offices or other specialist CLCs;
- face particular problems relating to recruiting and retaining experienced staff;
- may face difficulties managing resource allocations which do not adequately cover the additional costs of running outreach programs; and

.....  
326 ABS Legal Practices Survey 2001-2002 at 8.

327 See various submissions to the Senate Inquiry into Legal Aid and Access to Justice at [www.aph.gov.au/senate/committee/legcon\\_ctte/completed\\_inquiries/2002-04/legalaidjustice/index.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/index.htm) (viewed April 2006); see also Gillian McAllister and Tom Altobelli, *Pro bono legal services in Western Sydney* (UWS & LJF November 2005), available at [www.nationalprobono.org.au/publications/other.html](http://www.nationalprobono.org.au/publications/other.html) (viewed April 2006).

328 M Gawler, ‘Pro Bono in the Suburbs and Country’, Paper given at the First National Pro Bono Conference, August 2000, cited in Victorian Parliament Law Reform Committee, *Review of Legal Services in Regional and Rural Victoria*, May 2001 at 273.



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- have greater difficulties than metropolitan CLCs incorporating volunteer assistance from private lawyers and law students into their service delivery models.

It has been suggested that the pro bono output of many RRR private lawyers is more likely to involve direct work with community organisations, schools and churches (as well as direct client work) than working in partnership with CLCs<sup>329</sup>. RRR CLCs also indicate that even where there may be a sizeable local profession available as volunteers, or to whom CLCs could refer clients, there is sometimes little capacity or expertise in community law – for example, in social security or discrimination law. There is also an apparent unwillingness and/or lack of economic viability for local solicitors to do legal aid work. These are all unsurprising when practical barriers, as well as a higher likelihood of conflicts of interest in comparatively small RRR communities, are taken into account.

### **Lack of lawyers**

There is a general shortage of lawyers in RRR areas. This takes a variety of forms.

- Lack of lawyers with particular expertise and knowledge in areas such as migration law, social security discrimination law, and family law<sup>330</sup>.
- Limited numbers of private lawyers in RRR areas willing to undertake legal aid work, due to restrictions imposed by Legal Aid Commissions (eg. preferred supplier arrangements)<sup>331</sup> and the departure of private practitioners from pro bono work generally<sup>332</sup>, attributable in some cases to the financial pressures of providing pro bono work<sup>333</sup>.
- A shortage of RRR lawyers generally, leading to problems such as conflicts of interest, lack of privacy and compromised confidentiality<sup>334</sup>, RRR lawyers tend to practise as sole practitioners or in small practices and are significantly more overtasked in pro bono matters than their capital city counterparts<sup>335</sup>.
- Lack of non-RRR lawyers able and/or willing to undertake pro bono matters in RRR areas even where within traveling distance. This hesitation extends to the placing of secondments in regional areas.

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329 See Glenn W Ferguson, President of the Queensland Law Society in *Proctor* (April 2005), at 2–3.

330 Submission to Senate Inquiry from CLCs; see *2004 Senate Report*, Ch 6.

331 As exists in Legal Aid Queensland (see QAILS, sub 73).

332 Submission to Senate Inquiry from CLC Association WA, sub 93.

333 *2004 Senate Report*, Ch 6.

334 *ibid.*

335 As mentioned above, RRR lawyers do 227% more pro bono work than their capital city counterparts (ABS, *Legal Practices, Australia, 2001-2002*, 8667.0, 25 June 2003 in Clayton Utz, sub 43).

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- CLCs and private law firms encounter ongoing staffing issues both in recruiting and retaining experienced staff on the low wages offered, and simply in the small ‘pool’ of volunteer lawyers and law students from which to draw<sup>336</sup>.

Some regional areas straddle two states and thus demand a certain level of cross-border knowledge from lawyers who must be eligible to practise in multiple jurisdictions.

### ***Technology as a constraint or opportunity***

While generally viewed as a cost effective tool to promote access to information and networks, technology can sometimes be a constraint where the infrastructure for pro bono delivery using technology is simply not in place. For example, RRR clients often have limited telephone and Internet access. The sole telephone in remote communities is often in the general store, which offers very little privacy. Some clients, especially Indigenous clients, hesitate to use telephone helplines or other electronic resources, either for technical reasons or because they are perceived as impersonal or threatening.

These issues have been put forward to explain why the Commonwealth Government’s Regional Law Hotline failed to fulfil its aims<sup>337</sup>. But even where clients have access to and are comfortable with facilities such as the Internet, there are concerns that without face to face contact, it is difficult to assess their understanding and to follow up their decisions.

Technological ‘solutions’ must be handled carefully to ensure they are developed to effectively meet demand. With telephone advice lines, a good use may be to assist people in police custody over the weekend. The rationale is that in these circumstances, telephone advice is better than no advice.

## **7.8 Limited resources and criteria**

Pro bono is a limited resource and the ability of any lawyer to assist at a particular point of time is contingent on many factors including expertise, conflicts, pro bono budgets, capacity and individual firm policy restrictions. Any or all of the above constraints, however, change from time to time. For example, while a firm’s litigation team may on a given day not have capacity to undertake a litigious pro bono matter, if a team’s large commercial matter settles, the firm may find itself with capacity. This unpredictability may be difficult for clients or referring organisations to accommodate.

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336 2004 Senate Report, Ch 6.

337 *ibid.*

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Some programs and schemes limit the area of law in which they will provide pro bono assistance, and others are restricted to matters that are in the ‘public interest’. While the public interest criteria facilitates assistance for matters that may have a broader public benefit, from the client perspective it can make it difficult to obtain pro bono assistance in matters that have no apparent impact beyond the importance to an individual client. From the pro bono lawyer’s perspective, the expectation to provide pro bono services may be, in some circumstances, unrealistic. In some cases, this expectation combined with the sentiment that government should be making a greater investment in publicly funded services, can lead to some cynicism in the profession that government is renegeing on its responsibilities to provide access to justice to disadvantaged people.

### 7.9 Consumer confusion about pathways to services

Reports from CLCs and individuals indicate that multiple entry points into the pro bono system, different guidelines for eligibility and particular areas of legal expertise within a law firm can make it difficult for those seeking assistance to easily find legal help. Clients may need to be persistent and may have to tell, and retell, their stories to a range of different people and service providers before they find a source of assistance. Requiring consumers to go through the legal aid application process and be rejected before they become eligible for pro bono assistance, while understandable, can be frustrating for consumers. The ‘referral merry-go-round’ or ‘referral fatigue’ is an increasingly noted phenomenon for consumers, some of whom may drop out of the system altogether<sup>338</sup>.

Ideally, pro bono schemes need to be well informed about what other pro bono providers are doing and be prepared to tell people openly that they have no legal remedy or that there may be no legal aid or pro bono service that can help them. Clearly, better coordination, simpler guidelines and better information flow between service providers, including government funded legal service providers, can assist.

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338 See Christine Coumarelos, Zhigang Wei, Albert Z. Zhou, *Justice Made to Measure, NSW Legal Needs Survey in Disadvantaged Areas* (March 2006), available at [www.lawfoundation.net.au](http://www.lawfoundation.net.au), “The value of ensuring that referral to legal services by non-legal workers is appropriate and efficient is highlighted by recent overseas studies which demonstrate that individuals typically experience ‘referral fatigue’ and give up trying to resolve legal problems if they are referred from adviser to adviser without receiving useful advice quickly (Genn 1999; Pleasence et al. 2004b). The use of non-legal professionals to signpost legal problems requires a simple, effective referral system, just as efficient, appropriate referral is required from generalist legal service providers to more specialist legal services.”

## 8 Ways forward

### 8.1 Introduction

This chapter makes some concluding observations about the key contours of the pro bono landscape and raises important issues and strategies for optimising pro bono service delivery. These are premised on recognition of the particular role for pro bono services in complementing, not replacing, publicly funded legal services.

Despite the absence of comprehensive data about pro bono, a situation which itself needs rectifying, we know that there is potential to build capacity within the profession to deliver better-targeted services to clients most in need of legal assistance. And we know that there are numerous and innovative ways of providing these services, particularly through partnerships between legal practices and community based and legal aid organisations.

It is also clear that there are barriers to the delivery of pro bono services that need to be addressed if pro bono is to optimise its role in the access to justice sector.

### 8.2 Client-focused pro bono

One of the key principles articulated in the *Task Force Report* is that the design, organisation and provision of pro bono legal services should be driven by client need<sup>339</sup>. Put another way, provision of pro bono services should not be driven by what lawyers are prepared to offer. Flowing from this is the need to identify client needs and to recruit and equip lawyers with the necessary skills and expertise to provide appropriate services.

Clients' unmet legal needs vary according to state and region, population and demographics. Those most aware of unmet legal need are local community organisations, particularly community legal centres and legal aid commissions. Community organisations may themselves have important unmet legal needs.

There are examples where the profession has come together to provide significant pro bono support for people whose legal needs are visible and for whom publicly-funded services are not readily available – for example, the substantial pro bono advocacy and representation provided to asylum seekers and assistance to homeless people through the Homeless Persons' Legal services across Australia.

339 See *Task Force Report* at 12.

Pro bono providers now have access to mounting empirical evidence about pathways to justice for disadvantaged people, and about the critical role non-legal services play in traversing those paths<sup>340</sup>. The evidence suggests that better coordination and integration of legal and non-legal services have the potential to provide improved access, increased efficiency, enhanced effectiveness, reduced administrative duplication and potential long-term cost savings<sup>341</sup>. In particular, research in this area concludes that increased coordination among legal and non-legal services is likely to be beneficial for disadvantaged groups including those with a chronic illness or disability and for Indigenous Australians, noting that these groups tend to have multiple legal and non-legal needs<sup>342</sup>.

Firms in particular are encouraged to be strategic about how they develop their pro bono programs and direct their limited resources. This is likely to involve more than simply becoming a member of a pro bono clearing house. *The Australian Pro Bono Manual* contains information on identifying needs and sources of work<sup>343</sup>. It describes the main ways in which the legal needs of people who cannot afford private legal services are met in Australia, cites some of the research reports and suggests different ways of sourcing pro bono work.

The Centre will continue to work with legal aid bodies, CLCs, ILOs, referral schemes, clearing houses, government and the legal profession to better identify areas of client need where it would be most beneficial for the profession to focus its pro bono effort.

### 8.3 Working with other service providers

Pro bono practice exists alongside the work of Legal Aid Commissions, CLCs, ILOs and other government-funded legal services. It also works alongside the ‘no win-no fee’ legal practices that provide services for people who would otherwise not have access to justice. Pro bono must continue to develop in a way that is complementary to the activities of these primary service deliverers.

Where pro bono involves representation in litigation or in a duty solicitor service, it is important to work with the court or tribunal concerned. Courts are usually grateful for pro bono representation, particularly when a person would otherwise be self-represented. Greater dialogue with a court or tribunal may lead to better organised pro bono, making it easier for practitioners to participate.

Pro bono providers almost universally take the view that legal assistance will not

340 Christine Coumarelos, Zhigang Wei, Albert Z Zhou, *Justice Made to Measure, NSW Legal Needs Survey in Disadvantaged Areas* (March 2006), available at [www.lawfoundation.net.au/](http://www.lawfoundation.net.au/)

341 *ibid* at 225.

342 *ibid* at 222-225.

343 *The Australian Pro Bono Manual* – Chapter 1.6.

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be provided if it is available from a government-funded legal service but there are areas of law where publicly funded assistance is inadequate to meet demand. Also, some lawyers and firms take the view that there are core areas of government responsibility, such as family law, where government should do more to make legal services available. In these circumstances, broader based pro bono initiatives may not be effective and this highlights the need for better dialogue and coordination between government-funded legal services, pro bono providers and referral schemes at a local, state and national level.

Some of the most successful pro bono activities involve partnerships between firms and community agencies, CLCs, university law schools and referral schemes. The Homeless Persons Legal services<sup>344</sup>, partnerships between referral services, law firms and community organisations, are good examples. Another is the partnership between Mission Australia, the Salvation Army and Freehills that has run the Shopfront Youth Legal Centre in Darlinghurst, Sydney since 1993. There are many others referred to in this Report and described in the Centre's *Working together* and RRR papers. In the latter, the Centre explored partnership arrangements between capital city based firms and regional CLCs. These have largely been successful and provide a model that could be adopted for future relationships.

Service providers should work more closely together and avoid duplication. For example, nearly 60% of PILCH (Vic) referrals come from not-for-profit organisations with public interest aims and objectives and many are seeking similar kinds of advice. PILCH (Vic) has resolved to implement an ongoing program of training sessions to be run collectively for these organisations, rather than deliver one-on-one advices.

There is also scope for pro bono providers to work more collaboratively with publicly funded legal service providers to assist disadvantaged people. For example, civil lawyers in legal aid offices in NSW assisted a severely disabled man gain access to a property owned by his mother and in which he had been left only a life interest. The client's disabilities were such that he would soon need alternative accommodation, health and home care services. Legal aid negotiated a favourable settlement for the client so that the house was transferred to him. The private law firm then assisted the same client, on a pro bono basis, in relation to a loan and mortgage transfer and obtained an exemption on the stamp duty<sup>345</sup>.

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344 See 3.6 for details.

345 Legal Aid News, March 2006, Issue 2, available at [www.legalaid.nsw.gov.au/asp/index.asp?pgid=364](http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=364), viewed April 2006.

## 8.4 Better coordination of pro bono service delivery

The sections above refer to the ideal of legal and non-legal service providers working together towards an integrated and coordinated approach to justice. Implicit in this ideal is a commitment to working efficiently and avoiding duplication and to ensuring that appropriate quality assurance mechanisms are in place<sup>346</sup>.

Players in the justice sector are sensibly looking at ways of streamlining the many avenues of access to services. Projects such as the Cooperative Legal Service Delivery Model in NSW noted above [see 4.3] are good examples of how legal service providers, including pro bono lawyers, can effectively and efficiently work together. The Victorian Attorney-General's Community Law Partnership Scheme [see 6.1] also exemplifies how pro bono lawyers and the publicly-funded legal assistance sector can work together in a more coordinated and collaborative way.

Coordination of the delivery of pro bono services has improved in some ways and in some jurisdictions, through clearing houses, referral schemes, pro bono coordinators at firms and a greater awareness in the community sector of the availability of pro bono services. But for legal consumers, the array of available services can be confusing. And it is not only the end-users of pro bono legal services who are confused. There is room for better coordination of pro bono service delivery in general, and in particular for improving pro bono referrals, communications and resource sharing amongst pro bono providers.

Legal aid bodies, CLCs and ILOs are sometimes bewildered by the variety of pro bono referral schemes. They prefer to use 'local knowledge' or contacts rather than go through what they regard as the complicated application processes required by some formal pro bono referral schemes.

However, the historically reactive and ad hoc nature of pro bono service delivery has resulted in an array of schemes, programs and services. Some efforts have been made to address this, for example the three referral schemes in Victoria co-ordinated by PILCH (Vic), have adopted identical application forms and are jointly managed and housed. The three pro bono referral schemes in NSW have occasional 'coordination meetings' but each has quite a separate focus. QPILCH is also exploring options to coordinate one scheme that represents the interests of the Queensland Bar, the Queensland Law Society and its own QPILCH members.

One figure that may help put referral schemes into context is that in the 2004-2005 financial year the total number of referrals from all the professional association and PILCH referral schemes was just over 1000. During the same period, five firms with

<sup>346</sup> Pleasence, P, Buck, A, Balmer, N, O'Grady, A, Genn, H & Smith M, *Causes of action: civil law and social justice*, Stationery Office, Norwich, 2004, as noted in Coumarelos, C, Wei, Z & Zhou, AH, 2006, *Justice made to measure: NSW legal needs survey in disadvantaged areas* (Law and Justice Foundation of NSW, Sydney 2006).



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structured pro bono programs handled over 2100 matters. The Centre recognises that the importance of quantitative output can be easily overstated and that it is often the quality of service delivery, and the unquantifiable saved and ‘avoided’ costs of providing assistance in both casework and other kinds of assistance that is significant. However these figures illustrate the point that there are many referral pathways for pro bono. Some of the 2100 matters handled by the five firms may have originated through referral schemes but many will have come directly via the outreach efforts of a firm’s pro bono coordinator or directly from a community legal centre or other community organisation.

PILCHs operate on limited budgets, provide differing levels of support for pro bono activity and the numbers of referrals to firms differ markedly from state to state. The broad support from the legal profession in Victoria that PILCH (Vic) enjoys has allowed it to provide ‘one stop shopping’ for pro bono legal services in Victoria. This has significant administrative benefits by facilitating easy referral to all schemes. The numbers of inquiries to, and referrals from, PILCH (Vic) continue to rise from year to year.

From a client perspective, PILCH (Vic)’s single pathway avoids confusion and ‘the referral roundabout’ by enabling staff to readily direct clients to the appropriate scheme and while this model may not fit all jurisdictions, better coordination of service delivery ought to be an objective in each state and territory. It requires broad acceptance of better coordination models as a worthwhile goal and then active support from the existing referral schemes, legal professional bodies and government.

Successes such as the Homeless Persons Legal services that now exist in four states require considerable planning and coordination and are well-supported by private law firms. Even so, there is scope for these and other clinic-based pro bono services to more effectively share resources and optimise time and cost benefits.

The Centre has noted that some court Management Plans are recommending pro bono referral schemes as a solution to the increasing number of self-represented litigants appearing in court. However, the number of referrals made through these schemes is low and has been falling. Anecdotally, some firms have complained about inappropriate referrals, perhaps because some Registrars are tasked with placing matters but have little experience or knowledge about the type of work a firm has expertise to undertake. And the rules of some court schemes can make it difficult for a firm to cease to act once a matter has been referred. It seems that in many cases the same pro bono providers, most notably barristers who have placed themselves on various court scheme pro bono registers, are frequently being called upon, with the result that their goodwill and availability are tested.

Some of these schemes have now been operating for a number of years (the Federal Court scheme has operated since 1998) and it may be useful to review their operation to identify ways in which the courts can make more – and more effective – referrals. The Centre believes that independent evaluations or reviews of existing court-based pro bono schemes should be undertaken before any further schemes are implemented<sup>347</sup>.

Another area where coordination may make a difference is through the use of web-based tools, particularly ‘matching’ services. Some are listed in the Report. They provide a highly convenient method for individuals and organisations to post pro bono opportunities and for providers to respond. With Internet use continuing to rise and the volunteering sector in the community predicted by some to increase significantly in the next 10 years, these online resources are likely to play a larger role in coordinating connections between clients and providers.

Many larger firms have significantly increased their commitment to pro bono and have expanded their pro bono programs. Putting adequate resources into the coordination of their various activities has been essential for this to be achieved. It is clear that having a designated pro bono coordinator at a firm (and preferably a written policy that has the broad support of the partnership) makes a considerable difference to firms output.

## 8.5 Collecting better data

The absence of comprehensive and publicly available information about how much pro bono is undertaken, how it is delivered, who does it and who receives it, has already been noted. Better tracking, recording and sharing of information and data would be helpful to all participants in the access to justice sector. This is a responsibility that needs to be shared across the profession.

Better data will allow the profession to assess whether their resources are being used efficiently and effectively, and whether their pro bono output is meeting its goals and complying with any policy or budget. Keeping records and data about pro bono activities may also be a requirement to provide evidence of the type, range and quantity of pro bono work undertaken for certain legal contracts (such as tenders). Information about measuring and recording pro bono activity can be found in the *Australian Pro Bono Manual*<sup>348</sup>.

Better information will undoubtedly help identify areas to which greater legal aid services should be directed and provide a perspective on where it would

347 See comments reflected in AIJA Report, *Forum on Self-Represented Litigants* (2004), available at [www.aija.org.au/online/SRLForumReport.pdf](http://www.aija.org.au/online/SRLForumReport.pdf) at 19.

348 See [www.nationalprobono.org.au/probonomanual/ProBono\\_Manual\\_01\\_d.htm#13](http://www.nationalprobono.org.au/probonomanual/ProBono_Manual_01_d.htm#13)

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be most appropriate to support an increase in the provision of pro bono services. It is anticipated that the Centre's national survey of the profession will provide useful information which can be used to assist the profession in planning service delivery.

Many firms understandably do not want details of their pro bono work published broadly: some consider their pro bono output as part of their role as professionals, and do not see the need to publicise it. Others however, publish annual reports about their pro bono and community service activity. These reports contain information on the scope and variety of their pro bono programs and provide useful descriptive and qualitative information for emerging pro bono practices.

### 8.6 Sharing information

As the amount of structured pro bono has increased, so have the pro bono networks of those involved in the provision of services to the disadvantaged. We need to find ways to more effectively share the resources and valuable information across these networks.

There have now been three national pro bono conferences, each of which resulted in publications recording ideas and issues relating to pro bono service delivery<sup>349</sup>. Regular meetings now take place between state and territory PILCHs who all have websites and publish newsletters. Pro bono coordinators are developing their own information networks and the Centre's website and e-newsletter provide accessible communication channels through which information is being shared.

Some states have formalised their approach to sharing information and expertise. For example, in Victoria, the Victoria Law Foundation provides secretariat support for regular meetings of Victorian and national pro bono coordinators. New South Wales-based pro bono coordinators also organise regular meetings. Both groups use these meetings to discuss operational issues and problems and as an opportunity for other stakeholders to consult on pro bono issues in general.

The Centre trialed *probono.net*, an on-line tool developed in the USA, specifically for information sharing in the pro bono community but it has not had substantial uptake by the profession. It may be that local knowledge and face-to-face networks are, at this stage, an effective way to keep informed or simply that having to use a password to access a website is too great a barrier. It may also be a symptom of the relatively small Australian pro bono community.

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349 *For the Public Good*, Christopher Arup and Kathy Laster (eds), Federation Press 2001; *Transforming Access to Justice*, National Pro Bono Resource Centre 2005; Selected papers from *National Access to Justice and Pro Bono Conference 2006* available at NPBR website.

The Northern Territory Law Society Public Purposes Trust has supported two pro bono and legal aid conferences in Darwin. These usefully bring together the NT access to justice service providers to identify unmet need and to plan responses.

## 8.7 Building capacity

Building the capacity for the profession to undertake pro bono is one of the Centre's key tasks. This involves encouraging and supporting a greater number of legal professionals to fulfil their responsibility to provide pro bono legal services and includes a focus on the involvement of non-legal professionals. It also requires that barriers to pro bono be addressed.

Capacity building involves encouraging pro bono activity with law students and academics, government lawyers and in-house corporate lawyers. It also involves training lawyers in the areas of law and practice where the unmet legal need is great, and where pro bono can make an impact.

It appears that some firms and lawyers do a lot more pro bono work than others. The burden of providing services should be shared across the whole profession. For certain issues, such as asylum seekers, a broad response has been forthcoming. Generally however, the day to day burden tends to be carried by a few lawyers and a few firms and from time to time they reach saturation point. The Centre believes that this pressure could be reduced through a greater contribution from all lawyers, but particularly those in some of the larger and mid-tier firms and those in-house with government or corporations.

There is scope to extend and enhance pro bono services through more organised and structured programs, more efficient referrals and coordinated referral schemes, cooperative partnerships, training, mentoring and developing systems for sharing expertise. However, capacity to undertake additional in-house pro bono in smaller solicitor practices, especially in rural areas, is unlikely. There are also other areas of the legal profession that are close to capacity in terms of providing further pro bono services.

### **Training and skills**

A commonly identified barrier to pro bono is the mismatch between the skills and knowledge of pro bono lawyers and the expertise and services typically required by pro bono clients. The *Australian Pro Bono Manual* outlines responses to this problem.

Firstly the matter may be less serious than supposed. Lawyers have a range of generalist and generic skills that can be adapted and built upon to provide useful assistance to disadvantaged clients. Similarly, lawyers can work from their own skill

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base to assist with meeting community need. For example, lawyers can provide important transactional assistance to community organisations in areas such as tax, contract, corporate governance, employment and intellectual property.

Secondly, there are some areas where it is relatively easy for lawyers to acquire skills and knowledge through research, training or supervised practice. CLCs have expertise in welfare rights, consumer credit and tenancy. The training opportunities provided by, for example, Homeless Persons' Legal services across Australia are another good example of how skills and knowledge transfer can be used to build capacity. The following examples illustrate how pro bono lawyers, with training from CLC or legal aid lawyers with expertise in the relevant areas of law, can provide assistance for pro bono clients:

- banking and finance lawyers have been trained to prepare financial statements for child support applications;
- trained private lawyers are rostered to assist women with domestic violence applications in local/county courts;
- corporate lawyers have been trained in drafting affidavits for interim orders in family law child contact matters<sup>350</sup>, preparing wills for disadvantaged clients<sup>351</sup> and assisting cancer patients early access to superannuation benefits<sup>352</sup>;
- training has been provided to assist clients with victim compensation matters.

Recently in Sydney, LACNSW has opened its in-house training courses for pro bono solicitors. Conversely, some pro bono firms have provided training for community sector workers in areas such as trade practices and consumer protection, intellectual property as well as corporate governance training for not-for-profit organisations.

Thirdly, there are models of pro bono practice that involve complementary partnerships between pro bono lawyers with particular skills and community legal sector or legal aid staff with different skills. For example, lawyers can provide research support or case mentoring to a solicitor based in a CLC or a partnership may involve co-counselling arrangements. There may be scope for these opportunities to be credited towards lawyers' mandatory continuing legal education obligations.

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350 See the Family Law Affidavit Project, at [www.lawsociety.com.au](http://www.lawsociety.com.au)

351 Note in particular Blake Dawson Waldron's 'Wills Project', Pro Bono Annual Report 2004–2005.

352 See Baker&Mackenzie's work with the Peter MacCallum Cancer Centre at [www.justiceprobono2006.com.au/abstractpapers/Jennifer%20McVicar%20cancerpatients.pdf#search=%22baker%20mackenzie%20cancer%20patients%22](http://www.justiceprobono2006.com.au/abstractpapers/Jennifer%20McVicar%20cancerpatients.pdf#search=%22baker%20mackenzie%20cancer%20patients%22)

### **Law schools**

The Centre is working with the Council of Australian Law Deans (CALD) with a view to encouraging a long term pro bono ethos in law students (see 2.5). In particular, the Centre has sponsored the development of the Pro Bono Students Australia (PBSA) pilot program with the University of Western Sydney (UWS). The PBSA model has a student-led management aspect and it is conceivable that this model could be expanded and supported by a central coordination resource.

There is scope for more law schools to provide students with greater access to organised pro bono activities or clinical education programs. The Centre believes there are opportunities to roll-out the PBSA program in some law schools, particularly as much of the ground work has now been done.

The Centre is aware of considerable enthusiasm for improving links between universities and CLCs. CLCs point to scope for assistance with advice work and to assistance from academics (with expertise in areas such as human rights or employment law) in running workshops for not-for-profit organisations.

Looking at US law schools that have recommended the adoption of pro bono policies<sup>353</sup>, it is clear that pro bono culture and indeed legal professionalism can be promoted in Australian law schools in ways other than clinical legal education initiatives. To this end, the Centre has recently commenced formal dialogue with the CALD to focus on student and faculty pro bono. The Centre is interested in participating in any discussion or policy initiatives that systematically encourage legal professionalism at the earliest stages of lawyers' careers.

### **Corporate and government lawyers**

In-house corporate and government lawyers are a significant part of the profession, as much as 25% of all legal practitioners. While many corporations have active community service programs, often through community partnerships and/or Foundations which support charitable causes, few Australian corporate legal departments have become involved in pro bono legal work. Some notable exceptions are the National Australia Bank, Tabcorp and the Victorian Transport Accident Commission. They are members of PILCH (Vic), which has also recently recruited other corporations as members. The United States practice of corporate law firms assisting the in-house counsel of their corporate clients to develop pro bono projects is relatively under-

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 353 Based on its 1999 report *Learning to Serve: The Findings and Proposals of the AALS Commission on Pro Bono and Public Service Opportunities*, the American Association of Law Schools recommended that law schools adopt a policy with 6 components: an annual expectation, universality, beyond teaching and institutional service, institutional support similar to research support, autonomy and annual reporting. see [www.aals.org/pro++bono/report.html](http://www.aals.org/pro++bono/report.html) viewed April 2006.

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developed in Australia, and there is capacity to develop it further<sup>354</sup>.

There is also scope for governments to proactively support pro bono service delivery by the lawyers they employ. The Centre has encouraged Attorneys-General and their Departments across Australia to consider developing pro bono policies to cover their agencies and staff. The Centre's *Information Paper on Government Lawyers and Pro Bono*, while broadly supported, has not yet translated into any agency-auspiced pro bono initiatives nor any policy developments beyond encouraging their lawyers to volunteer at CLCs, an activity many government lawyers already undertake.

The barriers such as statutory restrictions on government lawyer practice areas<sup>355</sup> and practising certificates, conflicts of interest and professional indemnity insurance for all in-house lawyers are not, in the Centre's view, problems of a magnitude or complexity sufficient to warrant the relative lack of support for more proactive pro bono legal service initiatives by the corporate and government sector.

### ***Inter-professional cooperation***

Finding funds to pay for the costs of experts in litigation matters, such as the costs of medical or environmental reports, is a perennial problem in pro bono service delivery but there have been some local developments. The Environmental Defender's Office (EDO) has developed an Expert Register of scientific and technical experts willing to help the EDO on a pro bono basis in public interest environmental matters<sup>356</sup>. Many CLCs and firms keep their own informal registers of experts. Not surprisingly, there is some reluctance for professionals to publicise their willingness to provide reports on a pro bono basis.

QPILCH has recently commenced coordination of a panel of psychiatrists who are willing to provide free services on public interest legal matters and further work could be done in all states and territories through direct approaches to professionals and professional associations at a local level. The *Task Force Report* provides some guidance on strategies in this area<sup>357</sup>.

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354 For example, in the USA, lawyers and paralegals from MacDonalds Corporation have partnered with lawyers from Baker & Mackenzie to assess loan applications for predatory lending practices. See [www.corporateprobono.org/](http://www.corporateprobono.org/) for more information on corporate pro bono in the USA.

355 For example, the *Judiciary Act* 1903 (Cth) prescribes the nature of work that may be undertaken and the category of clients who can be represented by Australian Government Solicitor lawyers.

356 See [www.edo.org.au/edonsw/site/science\\_expert.php](http://www.edo.org.au/edonsw/site/science_expert.php)

357 See *Task Force Report* at 17–18.



## 8.8 Voluntary ‘aspirational’ pro bono targets

*There are many reasons for [pro bono service], apart from the common decency of helping those in need. Much has been given to our profession; it seems right to give something back — indeed, it is an ethical obligation. If we are a profession committed to justice, then we should want to participate in making justice accessible. Finally, pro bono service almost always turns out to be a matter of great satisfaction in a profession that has its share of pain and tedium.*<sup>358</sup>

The American Bar Association adopted Model Rule 6.1 in 1983, quantifying an aspirational pro bono goal. Model Rule 6.1 states that “every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year”<sup>359</sup>.

In Australia, four separate inquiries<sup>360</sup> have recommended the inclusion of aspirational targets in professional association rules or codes of conduct. Aspirational targets are voluntary and the Centre suggests that they should be seen as a formal statement of principle about the profession’s values, not a regulatory burden. They provide a clear statement of how seriously the profession considers its responsibility to do pro bono work.

The Centre has announced the introduction of an aspirational pro bono target (the Target)<sup>361</sup> of 35 hours<sup>362</sup> per lawyer per year, commencing 1 January 2007. The principal aim of the Target is to raise the profile of pro bono work across the profession by providing a benchmark for pro bono legal work and confirming the shared professional responsibility of lawyers to further access to justice.

International experience has shown that aspirational targets have helped to significantly increase the volume of pro bono work and that they have challenged lawyers to be more innovative in their approach to pro bono work<sup>363</sup>.

358 Jerome J Shestack, former President American Bar Association, in California Bar Journal (1998) discussing the introduction of the Association’s voluntary pro bono target, at [calbar.ca.gov/calbar/2cbj/98jan/98jan-22.htm](http://calbar.ca.gov/calbar/2cbj/98jan/98jan-22.htm)

359 Adoption of the ABA Model Rule 6.1 in 1983 was preceded by considerable discussions about lawyers’ professional responsibility to assist disadvantaged people, since at least 1963. See the historical timeline of the development of the Rule at [www.abanet.org/legalservices/probono/stateethicsrules.html#appendix\\_b](http://www.abanet.org/legalservices/probono/stateethicsrules.html#appendix_b)

360 See 8.8, above.

361 For detailed information about the Target see [www.nationalprobono.org.au/target/](http://www.nationalprobono.org.au/target/)

362 This figure is based on consultations with the profession, and informed by data from the Centre’s 2006 national survey.

363 See, for example, the positive effect of introducing and reporting on targets in some USA states: at [www.abanet.org/legalservices/probono/reportingguide.html](http://www.abanet.org/legalservices/probono/reportingguide.html)

## 8.9 Beyond the casework model

The traditional model of pro bono legal assistance involves a lawyer advising or representing a client as part of their ordinary legal practice, but not charging the client for the services. While there is undeniably a need for this kind of assistance, increasing attention is being given to other kinds of legal assistance including professional development, training, research and mentoring as well as IT and publication assistance to community organisations. Such ‘multi-tiered’ relationships and partnerships provide opportunities and benefits for both the recipients of the assistance and the lawyers involved.

Some CLC lawyers, especially those in regional, rural and remote areas, report the benefits of informal mentoring they receive when they develop a relationship with larger corporate law firms. Having the opportunity to talk through issues or matters in areas of law unfamiliar to community lawyers and, conversely, having corporate lawyers apply their expertise to community law practice, has clear benefits to all. Co-counselling arrangements where a pro bono firm and a CLC work collaboratively on a matter have similar benefits. The CLC does the groundwork including merits assessment, client liaison and any campaigning work while the firm assists with preparing documents, witness statements and general litigation processes.

Some firms have developed a relationship with a community group or charity that provides opportunities for non-legal volunteering and for non-legal staff at the firm to donate money through a ‘workplace giving’ program<sup>364</sup>. These initiatives provide an opportunity for all employees of a firm to be involved in activities that ‘give back’ to their community.

### ***Discrete task assistance***

Lawyers routinely undertake limited or discrete legal tasks for clients, for example, undertaking research on a particular cause of action but not providing representation, or assisting a client with a divorce application but not with a property settlement. These are sometimes referred to as ‘unbundled legal services’.

There has been a concern that this discrete task assistance may raise liability issues but there seems no reason why liability would be enhanced simply because the legal assistance is provided pro bono. Differences of opinion between client and lawyer about the scope of assistance being offered, difficulties of communication between lawyers and clients and restrictions on services available are neither novel, nor unique to pro bono. The essential element is that there is a clear understanding of, and agreement to, the limited scope of assistance being offered and provided.

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364 For example, Mallesons Stephen Jaques ‘Mallesons in the Community’ program at [www.mallesons.com/community/5502397W.htm](http://www.mallesons.com/community/5502397W.htm)

By clearly defining and providing training in discrete areas of law or time limited projects in which lawyers can deliver pro bono legal services, discrete task assistance provides a good opportunity for some consumers to get some legal assistance, as opposed to none at all<sup>365</sup>.

### **Law reform and community legal education**

Law reform research and submission writing are tasks that are well suited to pro bono activity as they draw on the considerable research capacity that exists in law firms, can be done in-house and are often not urgent. Submissions that address a systemic issue or injustice have the potential to benefit a broad range of people, including those who have poor access to legal services in rural areas.

Law reform work typically involves the preparation of a submission to a Minister, government agency or inquiry for, or in partnership with, a community agency. Examples where pro bono lawyers have assisted community organisations in this way include submissions on the impact of the *Vagrancy Act 1966* (Vic) on people experiencing homelessness; on social status discrimination under the *Equal Opportunity Act 1995* (Vic); on women and the right to adequate housing; legal capacity; and on the feasibility of establishing a Homeless Persons' Court. In addition, several larger law firms with pro bono practices have made submissions to the Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice advocating, in their own right, for increased government support for publicly funded legal services<sup>366</sup>.

To effectively harness pro bono lawyer involvement in law reform initiatives, the tasks need to be made clear. Thus, rather than asking a firm to write an entire submission, a firm can be asked to assist with discrete questions or issues, background and library research, even proof-reading.

Pro bono legal assistance may also include providing community legal education, or assisting a community organisation with one of its community legal education initiatives. Some firms have assisted CLCs with funding applications for community-based projects, including the development of community legal education resources.

Community legal education can take a variety of forms. As with law reform activities, firms may undertake such work either alone or in partnership with another firm or community organisation. It can include seminars or the preparation of standard materials designed to advise sectors of the community about the effect of the law

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365 See G Renouf, J Anderson and J Lovric, 'Pro bono opportunity in discrete task assistance', in (2003) 41(6) *NSW Law Society Journal*.

366 See [www.aph.gov.au/senate/committee/legcon\\_ctte/legalaidjustice/report/contents.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/legalaidjustice/report/contents.htm)

## MAPPING PRO BONO IN AUSTRALIA

in particular areas. For example, legal academics and lawyers working for private firms contribute pro bono to legal publications such as the state based editions of *The Law Handbook*, a plain English guide to the law.

### 8.10 Researching and addressing constraints

An analysis of some of the constraints on pro bono practice is contained in Chapter 7 of this Report. These issues require further research to ascertain the extent to which they restrict or restrain the ability of lawyers to provide pro bono services and to suggest what might be done to overcome them. For example, the issue of disbursements and the development of a model disbursement fund which addresses cross-jurisdictional issues requires further research. The Centre continues to work on these issues.

Other constraints are well known and could be addressed with government support. Others require more direct support from courts and might include:

- fostering a ‘green light’ approach in the court system that will facilitate pro bono representation by paying for reasonable disbursements (with recovery by a disbursements fund in appropriate cases) or by waiving certain disbursements such as copy costs;
- funding interpreters and translation services for pro bono matters as well as making court transcripts available to pro bono parties (and possibly self-represented litigants to help them access pro bono assistance);
- affording referral schemes and pro bono lawyers some indulgence in terms of procedure and access to filed documents – especially in circumstances where a lawyer has been engaged moments before a court appearance.

### 8.11 Role of government

Pro bono legal service is a relatively small player in the access to justice sector. The main player is the government whose *primary* role in this sector is to adequately fund legal aid, CLCs, and other government-funded legal services. Its *secondary* role is to encourage and support the legal profession to provide pro bono legal services.

The Federal Government and more recently all the State and Territory governments, have committed financial support for the Centre until 2009. The Victorian Government has taken a number of initiatives to encourage and support the legal profession in Victoria to provide pro bono legal services. Specific examples are:

- the introduction (*Legal Profession Act, 2004*) of a new class of practising certificate issued without charge for practitioners engaged as volunteers at a CLC;
- support for the Pro Bono Secondment Scheme pilot, started in 2002,

under which lawyers from private practice were seconded to public legal service providers in Victoria. This successful scheme provided the incentive for some firms to start a pro bono practice. It has now been renamed the Attorney-General's Community Law Partnerships Scheme and is coordinated by the Victorian Federation of Community Legal Centres (Victoria);

- the Victorian Department of Justice's Government Legal Services Contract scheme, introduced in 2003, under which panel law firms commit a percentage of the amount of fees generated from government legal work to 'approved cause' pro bono activity in order to be selected onto the Panel.

These initiatives have made a significant difference and other governments are encouraged to examine them with a view to considering introducing similar schemes.

**Government role in addressing barriers**

There are a number of barriers that can be addressed through government initiatives and/or legislative reform. For example, government could:

- implement the Centre's Conflicts Protocol<sup>367</sup> to minimise the perception that lawyers undertaking pro bono work against government may be prejudiced in securing or retaining government legal work;
- consider when introducing legislative amendments that affect court processes whether they might impact on the willingness of lawyers to act in pro bono matters, particularly public interest test cases. Legislative amendments, such as those made to the *Migration Act*, which require lawyers *before a matter is initiated*, to certify that it has reasonable prospects of success, allow the Court to penalise lawyers where it finds a matter has been initiated or run without such prospects of success. This can have a chilling effect on pro bono by deterring lawyers from assisting disadvantaged people to pursue their rights.

Government has a key role in managing the administration of the court system. It could play a role in assisting self-represented litigants by providing funding for court-sponsored legal advice, for example, by rostered government lawyers or court-appointed counsel paid out of the justice budget<sup>368</sup>. It could also remove court fees for matters undertaken on a pro bono basis when clients could not otherwise

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367 See Chapter 7.4.

368 See Law Reform Commission of Western Australia, Review of the Criminal and Civil Justice System in WA, Recommendation 208, available at [www.lrc.justice.wa.gov.au/RevCCJS-p92/finalreport/finalreportpdf/ch18selfreps.pdf](http://www.lrc.justice.wa.gov.au/RevCCJS-p92/finalreport/finalreportpdf/ch18selfreps.pdf)

## MAPPING PRO BONO IN AUSTRALIA

afford to enforce or protect their rights.

While Governments often commend the private profession's record in providing pro bono legal services, there is scope for the Government to encourage its own lawyers to undertake pro bono work, both at an individual and agency level. In particular they can:

- encourage their lawyers to undertake pro bono work in a personal capacity by promoting pro bono opportunities;
- pay for practising certificates, where relevant;
- allow flexible work arrangements for volunteer work;
- allow reasonable use of government agency resources (such as library, telephone and photocopying) to do pro bono work;
- commit government agency resources and/or personnel by seconding lawyers to community legal organisations;
- provide outreach services (either alone or with other lawyers from private practice or publicly funded services);
- become members of a Public Interest Law Clearing House and receive referrals in a designated non-contentious/conflict free area of law; and
- participate in providing community legal education programs and materials.

### 8.12 Conclusion

Australian lawyers make a significant contribution to providing access to justice through pro bono legal services. However, government bears the ultimate responsibility for vulnerable people who need access to legal advice and representation, and the first line of defence in the fight for access to justice will *always* be legal aid, CLCs and ATSIILS<sup>369</sup>.

In his speech to Victorian pro bono coordinators in 2005, the Victorian Attorney-General Rob Hulls referred to government 'upholding its part of the bargain' with the private profession and pointed to a symbiotic relationship between government funding for legal aid and the legal profession's pro bono effort. The implication is that there is an unwritten agreement that the private profession's pro bono effort is directly related to the extent to which Government adequately resources primary legal service providers.

This public-private partnership is at the heart of the system through which pro bono services are delivered and there is little doubt that the decline in funding in

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369 Speech by the Hon. Rob Hulls, Attorney-General of Victoria to the Victorian pro bono coordinators workshop, 19 October 2005.

real terms to parts of the legal aid system<sup>370</sup> has resulted in both a decrease in the number of lawyers willing to take on legal aid matters and an increase in demand for pro bono legal services<sup>371</sup>. If governments at all levels want the private profession to begin, or continue to provide and expand pro bono services, then it is vital that the frontline service providers are adequately resourced. However, given the high level of unmet legal need in the community, it should be recognised that even a dramatic increase in legal aid funding will not diminish the demand for pro bono work. Also, the culture across the legal profession needs to further develop to enshrine the importance of the professional obligation to undertake pro bono work. Increased visibility of pro bono activity will assist with this.

It also makes good economic sense to support frontline legal services. Much of their work is preventative and cost-saving in that it reduces the extent to which individuals are involved in the legal system, or other sectors such as social and welfare services. Properly funded CLCs, legal aid and ILOs clearly provide benefits and avoid costs because of their early intervention and this has significant benefits to society as a whole.

While the development of pro bono in Australia over the past decade has been remarkable, there is still much that can be done to improve pro bono legal service delivery to disadvantaged and marginalised people – and to the organisations that assist them. What emerges from this Report is that the access to justice landscape within which pro bono legal services exist is a complex one, with many players. Better coordination, resource sharing and collaboration will reap benefits and make it more likely that our limited pro bono legal resources are utilised to meet the greatest unmet legal need.

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 370 See Senate Committee Report at [www.aph.gov.au/senate/committee/legcon\\_ctte/legalaidjustice/report/contents.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/legalaidjustice/report/contents.htm)

371 See Australian Law Reform Commission, *Managing Justice* (2000), Report No. 89 at Chapter 5, at [www.austlii.edu.au/au/other/alrc/publications/reports/89/ch5.html#fnB279](http://www.austlii.edu.au/au/other/alrc/publications/reports/89/ch5.html#fnB279)



## Acronyms and abbreviations used in this Report

AALS	Association of American Law Schools
AAR	Allens Arthur Robinson
AAT	Administrative Appeals Tribunal (Cth)
ABS	Australian Bureau of Statistics
ACLA	Australian Corporate Lawyers Association
ADT	Administrative Decisions Tribunal (NSW)
AGS	Australian Government Solicitor
ALRI	Australian Legal Resources International
ALS	Aboriginal Legal Services (Ltd)
ATSILS	Aboriginal and Torres Strait Islanders Legal Services
BDW	Blake Dawson Waldron
CCLCG	Combined Community Legal Centres Group NSW
CIC	Community Information Centre
CLCs	Community Legal Centres
CommLE	Community Legal Education
CLE	Continuing Legal education
CLSDM	The Cooperative Legal Service Delivery Model (NSW)
DPP	Director of Public Prosecutions
FVPLS	Family Violence Prevention Legal Services
FVPU	Family Violence Prevention Units
G+T	Gilbert + Tobin
HPLC	Homeless Persons Legal Clinic
ILO	Indigenous legal organisation
LACNSW	Legal Aid Commission of NSW
LARS	Legal Assistance Referral Scheme
LIVLAS	Law Institute of Victoria Legal Assistance Scheme
LJF	Law & Justice Foundation of NSW
MCLE	Mandatory Continuing Legal Education
Minters	Minter Ellison
NAAILS	National Association of Aboriginal and Torres Strait Islander Legal Services
NAAJA	North Australian Aboriginal Justice Agency
NACLC	National Association of Community Legal Centres
NNNIWLS	National Network of Indigenous Women's Legal Services
NPBRC	National Pro Bono Resource Centre
NTRB	Native Title Representative Body
PBSA	Pro Bono Students Australia

## ACRONYMS AND ABBREVIATIONS USED IN THIS REPORT

PBSC	Pro Bono Students Canada
PBSS	Pro Bono Secondment Scheme
PIAC	Public Interest Advocacy Centre
PILCH	Public Interest Law Clearing House
RACS	Refugee Advice and Casework Service
RASSA	Refugee Advocacy Service of South Australia
RILC	Refugee and Immigration Legal Centre
RRR	regional, rural and remote
SLFR	Spare Lawyers for Refugees
TAC	Transport Accident Commission
VBLAS	Victorian Bar Legal Assistance Scheme
UWS	University of Western Sydney
VLA	Victoria Legal Aid
WLS	Women's Legal Services NSW

The *Task Force Report* refers to Report of the National Pro Bono Task Force to the Commonwealth Attorney-General, 14 June 2001.

# MAPPING PRO BONO IN AUSTRALIA

*'Pro bono publico'* – for the public good – has always been a feature of legal service delivery in Australia. Our lawyers have an admirable history of providing pro bono services to increase access to justice for people who are disadvantaged or marginalised.

This Report, compiled by the National Pro Bono Resource Centre, draws together a range of information about the pro bono landscape in Australia. It addresses some pertinent questions about pro bono and the profession:

- who are the providers?
- how is pro bono delivered?
- how much pro bono is done?
- what are the constraints on delivering pro bono services?
- where should pro bono services fit into the overall access to justice landscape, and
- what needs to be done to ensure that scarce pro bono resources are targeted to those most in need?