



Launch of the National Pro Bono Task Force Report

Federal Court Conference Room
Level 17, Law Courts Building
Queens Square, Sydney

5.00pm, Friday, 29 June 2001

Prof David Weisbrot
Chair, National Pro Bono Task Force

INTRODUCTION

1. In order to tap the success and undissipated energy of last August's First National Pro Bono Law Conference, initiated by the Attorney-General, the Attorney established a broadly-based Task Force to explore in further detail the ideas and issues raised.
2. The report documents the enormous contribution already made by Australian lawyers in donating time, expertise and resources – but even in combination with legal aid there is nevertheless a high degree of unmet legal need in the community.
3. The challenge for the Task Force was to focus on pragmatic methods for enhancing access to the justice system for disadvantaged members of the community or those with modest means, through the delivery of more and better-targeted pro bono legal services. Among other things, the Task Force needed to identify the organisations, institutions and individuals best placed to advance these priority activities, and the areas in which the federal government can assist with leadership, targeted funding, or the removal of structural impediments.
4. It is often suggested that pro bono work is mainly the preserve of the large, well-resourced, commercial law firms located in the capital city CBDs, which have the size, flexibility, and economies of scale to 'leverage' the legal and other resources necessary for sustain an active pro bono practice. And even these firms face a number of challenges in providing extensive pro bono services.
5. However, a survey of some small-to-medium sized firms in rural and regional New South Wales conducted on behalf of the Task Force found that most of the solicitors contacted were undertaking very high levels of pro bono work. Many of the pro bono clients were former paying clients who were not able to afford the full level of fees. For the country solicitors concerned – and no doubt the same situation would obtain in the outer metropolitan suburbs – pro bono work is not so much a

professional lifestyle choice as an essential aspect of living and working in their communities.

6. Before spelling out its detailed recommendations, the Task Force included a statement of principles, or Preamble, which contains its working assumptions about the nature and purpose of pro bono practice in Australia. It is worth summarising here:

- **Pro bono practice is *not* a substitute for legal aid.** It is essential to distinguish lawyers' professional/ethical obligation to do pro bono work from the fundamental government/community responsibility to provide adequate levels of legal aid, especially in such core areas as criminal law and family law.

However, there is also a recognition that even dramatically *increased* levels of legal aid funding would not completely relieve the demand for pro bono work, given the high level of unmet legal need in the community.

Further, pro bono schemes have a number of benefits that are not always possible through legal aid schemes, such as: choice/diversity; flexibility; motivation; ability to tap the specialist expertise of leading practitioners; and ability to tap the resources/infrastructure of major law firms, the Bar and the legal academy.

- **The design and provision of pro bono services should be driven by client needs.** The provision of pro bono services should not be driven by what lawyers are prepared to offer. Rather, there is an urgent need to 'map client needs' – and if corresponding legal resources are not available, then there should be a concerted effort to recruit and/or equip lawyers with the necessary skills and expertise, and provide the necessary back-up support.
- **Pro bono clients should expect, and receive, the same high quality of service as all other clients.** Pro bono legal work always must involve legal services of the highest quality – not 'second rate justice', nor the sole preserve of young lawyers. Professional associations need to clarify the ethical framework for pro bono legal work – this entails a recognition that pro bono practice may involve different circumstances, but must never mean lower standards of ethics or quality of service. Common problems that may inhibit or compromise the delivery of pro bono services, such as conflicts of interest, also need specific treatment.
- **Pro bono practice is a voluntary activity,** deriving from the legal profession's service ideal, and is a shared responsibility involving individual practitioners, law firms, peak professional bodies, courts, law foundations and others. There is strong opposition in Australia to any element of compulsion in the performance of pro bono legal work – including, it should be said, from those lawyers with the strongest record of actually providing such services.
- **In the interests of a fair and efficient justice system, there is an important role for government in encouraging and supporting – but not controlling – pro bono**

initiatives. For example, governments might: (a) assist in overcoming some of the structural barriers to pro bono work (eg, filing fees and other court-related costs and disbursements), (b) provide resources to facilitate coordination and enhancement of pro bono services, and (c) encourage pro bono practice by taking into account evidence of a record of such 'good professional citizenship' as a factor in awarding tenders for government legal work.

7. The Task Force identified a list of specific (but inevitably related) needs, aims and projects, including among other things:
 - the improvement of communication and information-sharing among pro bono providers;
 - the active promotion of a strong pro bono culture in Australia, commencing at law school and continuing through all levels and styles of professional practice;
 - the development of clear, consumer-oriented standards of professional practice to guide lawyers undertaking pro bono work;
 - the creation of a 'best practice' management handbook and other guides and material to encourage and enhance pro bono practice;
 - the removal of a variety of structural barriers to pro bono practice (eg, filing fees, transcript fees, translators and other court-related costs and disbursements);
 - the negotiation of protocols regarding inter-professional cooperation in pro bono efforts (eg with doctors, accountants, actuaries, engineers);
 - the commissioning of solid empirical research to underpin reform efforts, such as a client-centred 'needs and pathways' study; and
 - the facilitation of partnership opportunities – across the different parts of the legal profession, as well as between lawyers and other community organisations, professions and business enterprises.
8. The Task Force also spent considerable time addressing in particular the key issue of the 'mismatch' between client needs on the one hand, and the supply (and accessibility) of pro bono legal services on the other. At the Conference, it was widely remarked upon that major law firms reported that while they had a strong commitment to pro bono practice, they were actually *unable to spend* their annual pro bono budgets because of insufficient or inappropriate referrals.
9. The Task Force believes that this problem goes much deeper than fine-tuning the mechanics of referral. At the heart of the mismatch is the fact that the areas of greatest need are in family law and criminal law, personal injury, migration and administrative matters (eg social security appeals). However, these are precisely the areas in which the large corporate law firms do not have in-house expertise.
10. Thus, the Task Force stated that an effective remedy for the mismatch must involve a more long-term and complex approach, that includes most of the matters referred to above:

- promoting a culture receptive to pro bono work;
 - improving outreach services and community education;
 - providing tools and training to willing lawyers;
 - providing 'matchmaking' opportunities that will enable skills and resources to be sent from wherever they are located to wherever they are most needed;
 - removing structural barriers;
 - sharing information about successful programs in Australia and overseas; and so on.
11. The Task Force was left with the issue of who would be responsible for all of this facilitation, creative development, coordination and quality control – as well as ensuring that valuable corporate memory was not lost, and sustaining the commitment, energy and continuity.
 12. The centrepiece of the Recommended Action Plan, therefore, became the establishment of an **Australian Pro Bono Resource Centre**. As designed, the Task Force does not believe that the Centre will be (or be seen to be) overly prescriptive, or likely to replicate or stultify local initiatives, or draw resources away from the frontline delivery of pro bono legal services – which is paramount.

ACTION 1: Establishing an Australian Pro Bono Resource Centre

ACTION 2: Producing a Best Practice Handbook for Managing Pro Bono Law

ACTION 3: Supporting Client-Focussed Research

ACTION 4: Developing National Professional Practice Standards For Pro Bono Legal Services

ACTION 5: Fostering a Strong Pro Bono Culture in Australia

13. In the cover letter to the Report, the members of the Task Force particularly thanked the Attorney for providing the initiative for the First National Conference on Pro Bono Law, for establishing and supporting the work of the Task Force, and for securing funding in the May Budget to ensure prompt implementation of our recommendations.
14. So it is now my special pleasure to introduce the Attorney-General of Australia, the Hon Daryl Williams AM QC MP, who will formally launch the Report and Recommended Action Plan of the National Pro Bono Task Force.

[Full list of Task Force members attached]

The National Pro Bono Task Force comprised

- Professor David Weisbrot, Australian Law Reform Commission (Chair);
- Ms Jill Anderson, Australian Council of Social Services;
- Associate Professor Chris Arup, Head of La Trobe University Law School;
- Mr John Boersig, Many Rivers Aboriginal Legal Centre and University of Newcastle;
- Ms Samantha Burchell, Executive Director of the Public Interest Law Clearing House (PILCH), Victoria;
- Ms Andrea Durbach, Director of the Public Interest Advocacy Centre (PIAC);
- Professor Paul Fairall, Head of James Cook University Law School and Chair of the Council of Australian Law Deans;
- Ms Karen Farley, Supervising Solicitor, University of Western Australia's Unrepresented Criminal Appellants Scheme (UCAS);*
- Ms Jane Farnsworth, National Pro Bono Coordinator, Mallesons Stephen Jaques;
- Dr Kate Harrison, Partner, Gilbert & Tobin, Sydney;
- Mr Mark Herron, Executive Director of the Victorian Law Foundation;
- Mr John Hodgins, CEO of Legal Aid Queensland and Chair of National Legal Aid;
- Ms Merran Lawler, Caxton Legal Centre and National Association of Community Legal Centres;
- Ms Annette O'Neill, Member of the Board of Governors of the Law and Justice Foundation of New South Wales;
- Ms Janet Power, Acting Assistant Secretary, Legal Assistance Branch, Attorney-General's Department, Canberra;
- Ms Alexandra Richards QC, Immediate Past President of Australian Women's Lawyers; and
- Mr Brian Withers, Partner, Johnston Withers, Adelaide, and Chair of the Law Council of Australia's Access to Justice Committee.

The Task Force also wishes to place on record its appreciation of the valuable assistance received from Associate Professor Kathy Laster of La Trobe University; Ms Lani Blackman, Mr Matt Hall, Ms Rosemary Adams, Ms Maria Zacharia, Ms Becky Bowyer and Mr Craig Biscoe (student intern) of the ALRC; Ms Martha Georgiou and Ms Simone Burford of the Attorney-General's office; and student summer clerks and solicitors at Mallesons Jaques, Sydney, who conducted three empirical research projects on behalf of the Task Force: Sarah Wynn-Williams, Winnie Lui, Rosalind Dixon, Elisa Arcioni, Kate Thew, Josephine Thornton, Michael Googan, Frances Gibson, Charles Coorey and Kirstin Fischer.