



Launch of the National Pro Bono Resource Centre (NPBRC)

Workshop address

State Library of New South Wales,
15 August 2002

Prof David Weisbrot
(Chair, National Pro Bono Task Force)

1. In August 2000, the Attorney-General initiated and hosted the First National Pro Bono Law Conference, in Canberra. The attendance was extremely large and suitably diverse, with participants from all parts of Australia and all parts of the profession.
2. Two points seemed to come up in every casual conversation: first, that the Conference was much more interesting and productive and enjoyable than most people expected (who had come out of a sense of duty); and secondly, that it was incredible that this was, indeed, the FIRST national pro bono conference.
3. Apart from the 'talking heads' part of the program, there were also Roundtable Discussions, which gave all delegates the opportunity to participate actively and directly in fleshing out the matters of concerns and the areas requiring attention and action.
4. In order to tap the success and undissipated energy of that Conference, the Attorney established a broadly based, 17-member, Task Force, which I chaired. Most of those members are here today. We were charged with exploring in further detail the ideas and issues raised and -most importantly- to make practical recommendations about how to advance pro bono practice in Australia to the next level.
5. The Task Force Report was launched in Sydney in late June 2001 (and met with an almost deafening silence from the media, which I still find puzzling and disappointing).
6. The Report documented the enormous contribution already made by Australian lawyers in donating time, expertise and resources- quite a different image of the legal profession than one gets from reading the public liability crisis campaign literature. However, even in combination with legal aid, there is nevertheless quite a high degree of unmet legal need in the community.
7. 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. As with most other scarce resources, legal services are not evenly spread through the community: access to legal

services is clearly more fraught in the outer metropolitan areas, in many parts of rural and regional Australia, in indigenous communities, and among recent migrant communities.

8. 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.

9. 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 significant challenges in providing extensive pro bono services.

10. However, a survey conducted on behalf of the Task Force of small-to-medium sized firms in rural and regional New South Wales 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 own communities.

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

- **[1] 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.
- **[2] 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.
 - **[3] 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 recognition of the fact that pro bono practice may involve different circumstances or contexts, 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 in the profession's ethical and practice standards.

- **[4] 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.
- **[5] 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:
 - assist in overcoming some of the structural barriers to pro bono work (eg, filing fees and other court-related costs and disbursements);
 - provide resources to facilitate coordination and enhancement of pro bono services; and
 - 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.

12. 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.

13. 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 First National Conference, it was widely remarked upon that while the major law firms reported a strong commitment to pro bono practice, many were actually unable to spend their annual pro bono budgets because of insufficient or inappropriate referrals.

14. 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.

15. 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.

16. The Task Force was left with the issue of who actually would be responsible for all of this on-going facilitation, creative development, coordination, standard-setting, and quality control- as well as ensuring that valuable corporate memory and continuity were not lost, and sustaining the commitment and energy.

17. Consequently, the centrepiece of the Task Force Report's Recommended Action Plan became the establishment of a National Pro Bono Resource Centre. So it is a particular privilege to have been asked to speak to you today, at an occasion which also marks the launch of that Centre.

18. Of critical importance, in last year's Budget, the Attorney was able to secure funding of \$1 million over four years to ensure the viability of the Centre in its initial stages. And let me now publicly congratulate Andrea Durbach and PIAC and its Project Partners for developing the successful tender for the Centre, and Gordon Renouf (a former student of mine) for being appointed the Foundation Director.

19. As designed, and in safe hands, I don't believe that the Centre will be (or will 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 must always be the paramount objective.

20. The Centre must move quickly and decisively to establish its own identity; to ensure that its existence is well-known in the legal profession nationally; and, of course, to make certain that it

is perceived to have something valuable to offer busy practitioners. First and foremost, it must be very clear that the Centre is there to provide assistance and support for the profession in the interests of pro bono clients-not to lecture or hector or make additional work.

21. Last year I had an inspirational visit to the already well-established US pro bono centre in Washington DC, housed at Georgetown University. Despite their significant experience in this field and relatively abundant resources, they nevertheless identified the key to success as determining and concentrating upon a few key areas of strategic priority, because it is potentially a huge field, and "you can't do everything".

22. The Workshop materials note correctly that the Centre "will seek to work collaboratively with existing organisations" and that one of the first tasks "will be to consult key stakeholders in the pro bono field" to help inform the Centre's work and priorities. That's why you are here today, and I thank you for your participation and wish you well in this very important task.