Future directions for Pro Bono Legal Services in New South Wales

Access to justice series

Law Foundation
OF NEW SOUTH WALES
Independence and Innovation

Future directions for Pro Bono Legal Services in New South Wales

Access to justice series

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Executive summary

1. Introduction

There is growing interest in pro bono work within the legal profession and among policy makers. Three institutional schemes have been established in New South Wales since 1992. In addition, several large law firms have developed mechanisms for formally dealing with pro bono work. At the same time, there have been significant changes in the legal services environment. Reductions in legal aid funding are expected to lead to greater demands for the provision of legal services on a pro bono basis. Increased competition within the legal profession may also force many lawyers to reduce their profit margins and to increase the amount of full fee paying work. This in turn will reduce the capacity of many lawyers to perform work for no, or a substantially reduced, fee.

Within this environment of change, the Law Foundation of New South Wales agreed to support a proposal from the Public Interest Law Clearing House (PILCH) for a study into future directions for pro bono legal services in New South Wales. This support was provided on an in-kind basis by having the Centre for Legal Process, one of the Law Foundation's research centres, conduct the project. At the time the study commenced, no formal research into pro bono legal services had been undertaken in Australia.[1]

The Terms of Reference for the project are included at the front of the Report.

2. Research methodology

The study covers pro bono legal services in New South Wales, although information and comments were sought from interstate and national bodies. Qualitative research methods were employed to conduct the study. These are set out in detail in chapter 2 of the Report.

3. The study's key themes

Two key themes emerged from the study: *modernising traditional pro bono practice* and *resourcing pro bono legal services.*

3.1 Modernising traditional pro bono practice

The study found that, while the provision of pro bono legal services has a long tradition, there is no universal view on what the term 'pro bono legal services' means in practice, particularly in the face of significant changes to the structure of the legal services industry. In order to establish a definition of 'pro bono legal services', the Centre explored three specific questions:

---

[1] In September 1997, while this study was on foot, the Law Society of New South Wales published the results of its Practising Certificate Survey 1997-98, which, for the first time, included questions about pro bono work.

- what types of services constitute pro bono work?
- which clients should be eligible for pro bono legal services?
- on what basis should legal services be provided?

3.2 A definition of 'pro bono legal services'

The Centre established the following definition:

> *Pro bono legal services are services that involve the exercise of professional legal skills, and are services provided on a free or substantially reduced fee basis. They are services that are provided for:*
>
> - *people who can demonstrate a need for legal assistance but cannot afford the full cost of a lawyer's services at the market rate without financial hardship;*
> - *non-profit organisations which work on behalf of members of the community who are disadvantaged or marginalised, or which work for the public good; and*
> - *public interest matters, being matters of broad community concern which would not otherwise be pursued.*

For a detailed discussion of the definition, see sections 4.3, 4.4, 4.6 and 6.2 of the Report.

The study also considered the relationship between pro bono legal services and publicly funded legal aid services. This is discussed in section 4.5 of the Report.

Within the key theme *of modernising traditional pro bono practice* is the issue of *quality of pro bono services.* The Centre considered a range of mechanisms that could be adopted by referral schemes to ensure that pro bono clients receive a high level of service from participating lawyers. The study also explores steps that can be taken by lawyers and law firms to ensure that a pro bono client receives the same level of service as a paying client. These are set out in section 4.7 of the Report.

3.3 Resourcing pro bono legal services

This second key theme covers four issues:

- human resources
- financial resources
- infrastructure
- availability of pro bono services

These are discussed in chapter 5 of the Report.

4. Principles for the delivery of pro bono legal services

As a result of the Centre's research, the Report proposes 21 principles to guide the further development of pro bono legal services. These are listed at the end of this Executive Summary. See also the discussion in section 6.3 of the Report.

5. Coordination of pro bono legal services

The Report proposes four different models for the future delivery of pro bono services. These are:

Model A - a central contact point

Model B - a central clearing house

Model C - a support agency

Model D -an advisory committee

5.1 The Centre's preferred model

Based on its findings, the Centre supports the adoption of Model A, a central contact point. This would provide centralised policy development and improved access to pro bono services white maintaining a diverse range of local and institutional schemes in operation. The structure, funding and operation of such a model requires further research. See generally section 6.4 of the Report.

6. Conclusion

Through its research, the Centre has provided essential information about pro bono services in New South Wales. The study:

- provides a clear and comprehensive definition of pro bono legal services
- finds that there are multiple ways in which the delivery of pro bono legal services could be improved, to make them more effective and efficient
- sets out a series of principles that should be adopted to achieve this.

Some areas remain for further inquiry:

- Further research needs to be carried out into lawyer attitudes to pro bono work and the factors influencing their participation in pro bono schemes.
- On-going research and evaluation must be built into any future structure for the coordination and delivery of pro bono legal services.
- Research is necessary to identify ways of building on the 'pro bono culture' that has already been established within the legal profession in New South Wales.

Principles for the delivery of pro bono legal services

THE ROLE OF PRO BONO

Principle 1 - pro bono legal services complement legal aid

The primary responsibility for ensuring access to justice for all people, regardless of their means, rests with the government. Pro bono legal services complement, and do not replace, publicly funded legal services.

Principle 2 - the legal aid debate

The legal profession and schemes coordinating pro bono legal services will take an active part in the debate about legal aid funding by:

- collecting statistical information about the amount and value of the pro bono legal services provided by the profession. This information should be collected consistently and on a coordinated basis;
- measuring the demand for pro bono services against changes in legal aid funding; and
- informing governments and the community through the media and other avenues about the profession's commitment to providing pro bono legal services and the need for legal aid funding to be maintained.

QUALITY

Principle 3 - referral of cases by schemes

Referring pro bono cases to lawyers with the appropriate skills is essential to ensuring quality in the delivery of pro bono legal services. To do this effectively, pro bono referral schemes will have a program for regular updating of their register of lawyers.

Principle 4 - monitoring of pro bono cases

A pro bono referral scheme will establish a system for obtaining information from the participating lawyers about the progress of matters, and for obtaining feedback from clients on the referral.

Principle 5 - complaints procedure

A pro bono referral scheme will establish a policy and procedure for addressing complaints from clients or lawyers about the scheme's operation. Both lawyers and clients will be advised of the scheme's procedure for dealing with complaints.

Principle 6 - providing information to participants

- Pro bono schemes will ensure that lawyers and clients who participate in the scheme fully understand what is expected of them and what they can expect from the scheme. Schemes will develop written protocols of conduct for this purpose.
- A scheme will assist participating lawyers to clearly communicate to their client the basis on which assistance is provided and the factors against which the progress of the case will be monitored. This will include precise information about any contribution to costs that is to be made by the client.

Principle 7 - ensuring parity of treatment for pro bono cases within law firms

Law firms will adopt the following measures to support pro bono work within their firms to ensure that the work carried out is of equal quality to work carried out in paying matters:

- Senior partners will contribute to the development of a pro bono culture within their firm by actively and visibly supporting their firm's pro bono efforts.
- Firms will incorporate into written guidelines a commitment to equality of treatment between paying and pro bono matters.
- Each firm will integrate pro bono work into its regular business by recording and evaluating pro bono work in the same manner as paying work.

RESOURCING

Principle 8 - access to a disbursements assistance fund

Where a matter is conducted by a lawyer on a pro bono basis, the client is relieved of the obligation to pay full professional legal fees. However, the problem of disbursements expenses remains. To be fully effective, pro bono legal services must be supported by one or a number of schemes for the loan of funds to meet disbursements.

Principle 9 - developing a pro bono culture

The development of a pro bono culture can only occur through a widespread effort across all areas of the profession. This initiative needs to include:

- partner leadership within law firms on the issue of pro bono work;
- visible participation in pro bono work by law academics and prominent members of the practising profession, in order to provide role models for law students and junior members of the profession. This could include involvement in secondments, major cases or projects and the establishment of mentoring schemes; and
- the introduction of the subject of pro bono work at an early point in the law school curriculum, including the opportunity to participate in pro bono legal services.

Principle 10 - pro bono networks within the legal profession

Pro bono schemes and other pro bono providers will collaborate for the purpose of developing pro bono networks within the legal profession. In particular, they will work at establishing:

- a system of pro bono agency arrangements, and
- research and specialist support networks for lawyers providing pro bono services.

Principle 11 - other pro bono network arrangements

Law schools, pro bono schemes and other pro bono providers will collaborate to explore ways in which law students can provide support to pro bono schemes and to the providers of pro bono services.

Principle 12 - recruitment of lawyers to pro bono schemes

Pro bono schemes will develop a range of recruitment measures (such as written material, seminars and personal approaches) to appeal to lawyers with different levels of motivation to conduct pro bono work. Before undertaking major recruitment efforts, however, pro bono schemes will ensure that they have an efficient referral system in place and that they will be able to involve new lawyers in pro bono work immediately.

Principle 13 - providing different avenues for participation

Pro bono schemes will develop a range of ways to involve lawyers in pro bono services. These could include direct representation of clients, interviewing of clients for intake, advice only services, recruitment of lawyers and mentoring of junior lawyers. This will enable lawyers who work outside the areas in which pro bono services are required, but who are willing to participate in pro bono programs, to engage in pro bono work.

Principle 14 - training needs

Pro bono schemes will identify the training needs of lawyers providing pro bono services and the most effective ways of meeting those needs. In this context, 'training' will include:

- training in specific legal issues commonly raised in pro bono matters
- training in communication skills and cross-cultural issues
- promotion of a pro bono culture within the legal profession.

Principle 15 - recognition of pro bono work

Pro bono schemes will develop different ways to recognise the efforts of participating lawyers. These could include publicising examples of pro bono work in the journals and newsletters of the professional associations, promoting and supporting the existing pro bono awards and encouraging clients to express their appreciation directly to their lawyer at the conclusion of the case.

Principle 16 - avenues for disbursements assistance

The pro bono schemes and other pro bono providers must play an active role in identifying and securing avenues for disbursements assistance. This would include, for example, negotiating formal agreements with the relevant agencies for the provision of transcripts to pro bono clients at no charge.

Principle 17 - registers of non-legal experts

The pro bono schemes and other pro bono providers must collaborate on the development of registers of non-legal experts prepared to provide their services for free or at a substantially reduced fee. The registers need to be established with the support of the relevant professional associations and build on the registers already developed by the schemes.

Principle 18 - contributions to fees by clients

Pro bono schemes will develop policies on the circumstances in which they will refer matters on a reduced fee basis rather than for free. These policies will then be publicised to clients, participating lawyers and referring organisations.

Principle 19 - referring cases on a conditional fee basis

Pro bono referral schemes can refer some cases on a conditional fee basis. However, such referrals will only occur under the following conditions:

- If the client is successful, the legal representative will only be entitled to recover costs to the extent that a costs order is made in favour of the client and costs can be recovered from the losing party.
- In the circumstances of the case, it is not possible to organise a referral on any basis other than a conditional fee arrangement.

Schemes will develop and publish policies on the circumstances in which they will refer cases on a conditional fee basis. These policies will be consistent with the limitations set out above.

PROMOTION

Principle 20 - publishing and promoting guidelines

Eligibility criteria for each pro bono scheme will be publicised to those organisations who may be in a position to refer clients to the schemes. This will be organised by:

- Publishing the guidelines in booklet form for distribution to community legal centres, legal aid offices and other relevant organisations and to members of the legal profession.
- Representatives of the schemes visiting community legal centres, legal aid offices and other relevant organisations to provide information about the schemes' services.

Principle 21 - detailed eligibility criteria

The guidelines for each pro bono scheme will include details of the criteria which establish a client's eligibility for the scheme.

Terms of reference

1. Define pro bono services

The report needs to define pro bono services for the purposes of applying any remedial action, while conceding that there may be argument about the definition and that many lawyers will have their own definition of pro bono services.

2. Describe the existing provision of pro bono legal services

That is, describe the formal schemes of PILCH, Law Society and Bar Association, and the provision by individual practitioners on their own accord.

3. Review the effectiveness of existing pro bono services.

This review should address the following areas.

- *Access to services.* Do all those who require pro bono services use the service? If there are some who do not, why not? For example, is it because they are not aware of the service?
- *Availability of services.* Are there enough pro bono services to meet the need?
- *Funding costs.* While a lawyer will provide their services without fee or for reduced fee, there may be other costs such as filing fees, transcripts, experts' reports, an award of costs against the client and so on. The question is what provision can be made to provide funds for these costs or to reduce them in some way.
- *Quality of services.* Are pro bono services of reasonable quality? To the extent they are not, what is the problem? Do lawyers not give the matters enough time and skill? Do the circumstances of clients make provision of adequate service difficult?
- *Coordinating services.* Given that there are three formal services and numerous individual lawyers providing pro bono services, is there a problem with this diversity such that there is a need to coordinate these services?

4. Propose preferred models for the improved structure, organisation and delivery of pro bono services.

The Governors would like to receive a proposal for a model or models, but that proposal must have regard to available human and financial resources.

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1

Introduction

1.1 Introduction

Legal services provided 'pro bono publico' are, literally, services provided 'for the public good'. Pro bono work has always been part of the professional life of lawyers, and has generally been a matter for the individual lawyer. In the last few years, however, more formal arrangements for pro bono work have been established with a view to providing pro bono assistance to the community on a more coordinated basis. In New South Wales, the most public of these formal schemes are the Law Society Pro Bono Scheme, the Bar Association Legal Assistance Scheme and the Public Interest Law Clearing House (PILCH).

In spite of these moves towards greater formalisation of pro bono work, there continue to be contrasting views on what should qualify as 'pro bono' service. The term 'pro bono' has been used to describe a range of legal services, including legal aid work, no-win-no-fee work, free work for disadvantaged clients and public interest legal work. Other issues also exist in relation to pro bono work: for example, how best to ensure the accessibility and quality of pro bono services.

Against this background, PILCH applied to the Law Foundation of New South Wales for funding for a study into future directions for pro bono legal services in New South Wales. The Law Foundation decided to give the study in-kind support by having one of its research centres, the Centre for Legal Process, conduct the study.

This report presents the findings of the study. It has been prepared with the aim, firstly, of profiling existing schemes and arrangements for performing pro bono work. It then addresses several key issues relating to pro bono work and the place of pro bono work within contemporary legal practice. Finally, the report proposes a model for the future coordination of pro bono legal services in New South Wales.

1.2 Pro bono work in context

Research for this study was conducted at the same time as several important changes were taking place in the legal services environment. Firstly, significant cuts to government funded legal aid were announced by the Federal Government. These are expected to result in greater demands for the legal profession to accept cases on a pro bono basis.

At the same time, there is growing interest in pro bono work within the legal profession, and a recognition that the resources available to pro bono work can be most effectively harnessed if they are organised on a coordinated basis. Since 1992, three institutional pro bono schemes have been developed in New South Wales - the Law Society Pro Bono Scheme, the Bar Association Legal Assistance Scheme and

PILCH. Several large law firms have also developed pro bono policies and management strategies. The most recent effort to coordinate pro bono legal services has been the publication of the *Pro Bono Directory.*[1] An initiative of the Chief Justice of the Supreme Court of Victoria and of the Victoria Law Foundation, the *Directory* is aimed at informing Australian lawyers of opportunities for performing pro bono work and thereby encouraging lawyers to make their skills available for such work.

Interest in pro bono work within the legal profession is not confined to Australia. In the United States, organised pro bono schemes have developed at an increasing rate over the last 15 years.[2] Some examples of recently established schemes are the People's Pro Bono Action Center, established in 1990 by the Maryland State Bar Association, and the Illinois Pro Bono Center, established by the Illinois State Bar Association following a legal needs study in 1989. In February 1996, the American Bar Association (ABA) published a set of standards to assist the effective operation of civil pro bono programs. The development of the standards was seen as being timely in view of the growth of pro bono schemes and 'the period of change and re-invention in which existing programs are operating and new programs are being established'.[3]

In the United Kingdom the Solicitors Pro Bono Group was formed in September 1997. The aims of the Group are to provide a national focus for all pro bono activity undertaken by solicitors throughout England and Wales and to establish a coherent and supportive framework for solicitors providing pro bono legal services. The Group was formed after a meeting of over 50 solicitors from around England. Although it is working closely with the Law Society, it remains an independent organisation.

This review of pro bono legal services in New South Wales is therefore timely because it is occurring during a period when there is likely to be increasing demand for pro bono services. It also coincides with moves in several jurisdictions towards providing pro bono services through more formal structures.

1.3 Outline of this report

This report sets out the results of the Centre's research into future directions for pro bono legal services in New South Wales. In summary:

- chapter 2 outlines the methods used to conduct research for the study
- chapter 3 describes the range of pro bono services currently being provided in New South Wales
- chapter 4 discusses the first key theme which emerged from the study findings—modernising traditional pro bono practice
- chapter 5 discusses the second key theme from the research—resourcing of pro bono legal services
- chapter 6 sets out the Centre's recommendations on the principles and standards to guide the future structure and delivery of pro bono legal services
- chapter 7 contains recommendations for further research that should be carried out in relation to pro bono legal services.

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1 C English Pro Bono Directory *A Guide to Pro Bono Opportunities for the Legal Profession* Victoria Law Foundation October 1997.

2 Standing Committee on Lawyers' Public Service Responsibility *Standards for programs providing civil pro bono legal services to persons of limited means* American Bar Association Chicago 1996, v.

3 ibid.

1.4 Caveats

The research conducted for this report was limited by several practical and resource constraints. In reading this report, a number of caveats should be kept in mind.

- As part of the research carried out for this report, the Centre published a Discussion Paper which sought comment on certain key issues. The Discussion Paper was distributed to over 100 organisations and individuals interested in pro bono legal services. A high response rate was not achieved for the Discussion Paper, with only 12 written submissions being received by the Centre. However, the research design was not solely reliant on data provided by written submission. It incorporated multiple methods of qualitative data collection, thus involving a range of key informants. Consequently the low response rate was not viewed as a major impediment to the project continuing.
- The terms of reference for the project were reviewed during the course of the research and after much of the research had been conducted. This affected the usefulness of some of the material collected during interviews and consultations, as some of the questions raised in the revised terms of reference were not included in the initial terms of reference.
- Only limited information is available about the level of legal need within the community and the extent to which pro bono legal services are used. The time and budget available to the project did not allow for the conduct of major surveys on these issues. As a result, data was not available to answer some of the questions raised in the terms of reference. For example, it was not possible to obtain data to answer the question: are there enough pro bono services to meet the need?
- Time did not allow for the survey instruments and interview schedules to be piloted.

At the same time, the study has a number of important strengths.

- Multiple qualitative data collection methods were employed to gather information for the study. These included face-to-face interviews, telephone interviews, document analysis and the canvassing of expert opinion.
- The study received generous cooperation from the pro bono schemes and from many practitioners involved in the delivery of pro bono services.
- The study has provided much needed information about pro bono service delivery in New South Wales. No similar study has been undertaken previously, and the research provides a wealth of data to improve our understanding of current pro bono practice.
- Finally, the study has generated recommendations designed to support the future growth of pro bono legal services.

1.5 Not an evaluation of individual schemes

In reading this report, it is important to note that the Centre did not conduct a detailed evaluation of each pro bono scheme. Rather, the purpose of the research was to recommend general principles that should guide the operation and future development of pro bono services.

1.6 Disclaimer

The recommendations, statements of opinion and conclusions in this report are those of the Centre. They do not necessarily represent the views of the Pro Bono Project Advisory Panel or of the Law Foundation Board of Governors.

2

Methodology

2.1 Introduction

This chapter describes the qualitative methods employed in this study, in four major sections:

section 2.2	the research design section
section 2.3	a description of the research instruments section
section 2.4	the analysis methods employed
section 2.5	the ethical parameters of the study.

2.2 Research design

2.2.1 The design of the study

Qualitative research is:

> *...a way to gain insights through discovering meanings and is a means of exploring the depth, richness and complexity inherent in phenomena.*[4]

The study was designed to provide descriptive information about pro bono legal services by acquiring qualitative data from practising solicitors and legal organisations who provide those services to the community.

2.2.2 Study participants

Selection of potential research participants was guided by the initial Terms of Reference (refer to section 1.4), and had regard to the researchers' knowledge of key players and commentators in the area of legal service delivery. As a result, those identified to take part in the study included private practitioners and law firms, community legal centres, organisations coordinating pro bono services, Legal Aid Commissions and National Legal Aid and courts. A list of those who actually participated in the study, either through the consultation process or by submitting a written response to the Discussion Paper, is provided in Appendices A and B.

2.2.3 Study setting

The scope of the study was confined to Sydney, New South Wales, although comments were sought from interstate and national bodies. The views of interested organisations and individuals in both urban and rural centres in NSW were canvassed.

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[4] N Burns & S Grove *The Practice of Nursing Research: Conduct, Critique and Utilisation* 1993, 777.

2.2.4 Timeframe

The research was conducted in two stages. Stage 1 involved the design of the research, data collection and the preparation of a preliminary report. This took place over a four month period beginning in mid-July 1996.

Stage 2 commenced in February 1997, and included reading and re-reading of the preliminary report, reanalysis of the data, reflection and writing of the final report.

Details of the work undertaken in the course of the project are included at Appendix I.

2.3 Research instruments

At the time this study commenced, there had been no formal research undertaken in Australia into pro bono legal services.[5] It was therefore necessary to design new research instruments to collect information for the project. A combination of qualitative research methods was used to collect the information. Using a variety of methods is referred to as 'triangulation', and is a means of enhancing the validity of the study's findings. The use of a combination of methods not only allows the researchers to obtain a variety of information on the same issue but ensures that the weaknesses of one research method do not influence the research results.[6]

2.3.1 Questionnaire "Future directions in pro bono legal services in New South Wales"

The questionnaire consisted of 34 open-ended, qualitative questions, stemming from the Terms of Reference. It was designed to obtain detailed information concerning the operation of existing pro bono schemes. The questionnaire was sent to the Law Society Pro Bono Scheme, the Bar Association Legal Assistance Scheme, PILCH (NSW), PILCH (Vic) and the Law Society of Western Australia. The questions are set out in Appendix D.

2.3.2 Interviews

The interviews were of three types:

Type 1 interviews: face to face

Face-to-face interviews were conducted with nine participants; no-one declined to be interviewed. The interviews were conducted privately and in confidence; most took from 30 to 60 minutes. An interview schedule (see Appendix E) was designed to ensure that the interview canvassed the research issue, and participants' responses were documented.

Type 2 interviews: telephone

Telephone interviews were necessary as an alternative method of data collection due to the busy work schedule of participants who were prepared to provide data but who were unable to meet the tight timeframe of the study for the deadline for written responses. Two such interviews were conducted.

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[5] In September 1997 the Law Society of New South Wales published the results of its Practising Certificate Survey 1997-98 which, for the first time, had included questions about pro bono work. This survey is described in detail in section 3.2.4 of this report.

[6] E Babbie *The Practice of Social Research* California 1995, 106.

Type 3 interviews: informal discussions

Informal discussions, both in person and over the telephone, took place between the researchers and people involved in the provision of pro bono legal services. Discussions covered opinions, attitudes and experiences concerning pro bono work. While this data was not formally recorded, it enhanced the depth of the researchers' understanding of the nature of pro bono activity in NSW.

2.3.3 Document analysis

On 20 September 1996 the Centre published a Discussion Paper, *Future Directions for Pro Bono Legal Services in New South Wales*. A copy of the questions raised in the Discussion Paper is attached at Appendix F. The Discussion Paper provided background information to, and invited comment on, a range of issues concerning the definition, coordination, development, resourcing and promotion of pro bono legal services.

One hundred and one copies of the paper were circulated and sent to the selected participants (see 2.2.2 above). In order to meet timelines set for the research, the deadline for submissions to the paper was 18 October 1996.

The Centre received 12 written submissions in response to the Discussion Paper. A full list of submissions is in Appendix A.

A high response rate was not achieved for the Discussion Paper, even though reminder letters were mailed to individuals and organisations to whom it had been sent. However, the design was not solely reliant on data provided by written submission. It incorporated multiple methods of qualitative data collection, thus involving key informants. Consequently, the low response rate was not viewed as a major impediment to the project continuing.

2.3.4 Survey of Law Deans

A survey, comprising four questions, was sent by email to the Deans of all 28 Australian Law Schools. The survey sought information on any courses that provided content and/or discussion of pro bono legal services, and on any other Law School activities relevant to pro bono legal services. (See the questions at Appendix G.)

A reminder was sent by email to those Deans who had not responded to the survey. The Centre received 9 responses to the survey. (A full list of respondents is provided in Appendix H.)

2.3.5 Project Advisory Panel

The Centre established a Project Advisory Panel to provide expert advice and assistance on the review. Nominations for the Panel were sought from the major pro bono and legal assistance schemes operating in New South Wales, community legal centres, Legal Aid NSW and NCOSS. (Refer to the list of Panel members in Appendix C.)

The Panel met twice. The purpose of the first meeting was to discuss the project and identify issues it needed to address. The second meeting discussed the draft recommendations prepared by the Centre. For both meetings the Centre prepared a background paper which provided the results of its research (including consultations and submissions), and raised issues or draft recommendations for discussion. Individual Panel members also provided valuable input during the course of the project by making themselves available for interviews and informal discussions.

2.4 Analysis

2.4.1 Providing evidence from the analysis

The final stage in the qualitative research process, after research design and data collection, was the conversion of the data into a comprehensive, clear analysis.

In reading an analysis of data, the reader must be able to follow closely the development of major and minor themes. Data presentation strategies are often poorly conceived, or neglected. Researchers make many choices in the design of research studies and analysis of the findings. However, in the publication of the work, some researchers fail to specify choices made and the rationale underpinning decisions.

Following transcription, the next step was to analyse all data and make connections and identify patterns occurring until like concepts emerged. The process of axial coding was used (refer to map at Appendix J). These initial codes were confirmed and renamed, and concepts were formed into sub-themes (referred to in the report as "issues") and major or "key" themes.

Initially, eight themes emerged, but after further analysis these were collapsed to form two key themes and six related issues which were then labelled. The name given to each theme was deemed as having 'best fit' and specific to that theme. A diagrammatic representation of these key themes and issues, and their relationship to one another, is provided in Appendix K.

The first key theme which emerged from the qualitative analysis was *modernising traditional pro bono practice.* This refers to the need to establish a definition of and role for pro bono legal services in the context of the changes that are occurring within contemporary legal practice. Closely related to this key theme were two issues: *accessibility,* and *quality* of pro bono services. These are discussed in chapter 4.

The second key theme which emerged from the analysis was *resourcing of pro bono services.* Related to this key theme were four issues: *human resources, financial resources, infrastructure* and *availability of pro bono services.* These are all discussed in chapter 5.

The issue *of coordination* arose throughout the study and was related to both of the key themes. *Coordination* is discussed in chapter 6 in the context of study outcomes.

To illustrate the quality, breadth and depth of the data, and to provide evidence of thematic development, findings in this report are featured by providing multiple examples of participants' quotes.

2.4.2 Factors which influenced the development of the coding scheme

To facilitate analysis, the data was categorised or 'coded', allowing the data to be rearranged and sorted according to some rules of order. Coding is essential if meaningful inferences are to be drawn from the mass of data.

Five factors influenced the design of the coding scheme:

- the researchers' combined experience of 20 years of legal practice and legal policy work, including experience of pro bono work within the framework of community legal centres in New South Wales
- analysis of the Australian and international pro bono literature. A bibliography appears at the end of the report
- interviews conducted with participants during the fieldwork (see 2.3.2 above)

- the consultants' experience in designing, conducting and analysing such surveys
- consultation with the Project Advisory Panel.

2.4.3 NUDIST: a computerised software program that assisted analysis

NUDIST ('Non-numerical Unstructured Data Indexing, Searching and Theorising') 3.0.6a, a computer software package for complex data analysis, was used to handle and assist analysis of the qualitative data. The software was not used to do the analytical task. Rather, it provided a basis for the researchers' analysis by formatting text files, line numbering, identifying segments of information for coding and providing an efficient retrieval system for the identified segments.

2.5 Ethics underpinning the study

The confidentiality of those interviewed for the project was maintained throughout the study. All records with participants' names were recoded using a chronological numbering system. In the fieldwork with participants, the researchers were professional in their manner, behaviour and actions.

2.6 Validity of the research

Validity of the fieldwork and interview procedure was based on:

- use of multiple data collection methods over time, facilitating concurrent validation
- openness and trust established in the field interviews, facilitating the expression of wide and diverse views
- searching for and giving consideration to negative cases identified in the interviews
- relevant knowledge and expertise of the participants.

2.7 Conclusion and implications

This chapter outlined the study methods employed, the instruments used to collect the research data, the analysis methods and rationale, and ethical issues underpinning the study. The fieldwork provided rich data, in the form of wide and diverse information collected over a four month period during 1996. The report now moves on to present the study findings.

3

Pro bono in New South Wales

3.1 Introduction

Pro bono services are not all of the same kind because there are many avenues through which legal practitioners undertake pro bono work. For working purposes, however, it is necessary and possible to divide pro bono services into two broad if not strict categories. First, practitioners provide pro bono services directly to clients. Second, they participate in one or more of the pro bono or legal assistance schemes operating in New South Wales. The schemes vary in their operation, including their degree of formality.

The major formal schemes are the Law Society Pro Bono Scheme, the Bar Association Legal Assistance Scheme and PILCH. These formal schemes have counterparts in other parts of Australia. There is, for example, a Public Interest Law Clearing House in Victoria, and the Law Access Scheme run by the Law Society of Western Australia. The Law Institute of Victoria is also assessing the feasibility of establishing a formal pro bono scheme. Less formal but by no means less useful are various schemes run by community legal centres, regional law societies, courts and local agencies.

3.2 Extent of pro bono legal services

3.2.1 No exact measure of pro bono work

The exact nature and extent of the contribution to pro bono work by all legal practitioners in New South Wales is not known. This is due in part to the informal way in which such work is performed (many lawyers do not keep any record of their pro bono work), the wide range of views as to what activities constitute pro bono work, and the absence of a comprehensive survey of the legal profession. However, some indication of the nature and extent of pro bono legal services can be drawn from recent studies and the activities of the major pro bono schemes.

3.2.2 The major schemes

In New South Wales, the major schemes are the Law Society Pro Bono Scheme, the Bar Association Legal Assistance Scheme and PILCH. Later sections of this chapter provide a detailed description of each scheme. However the level of lawyer involvement in each scheme is summarised in the following table.

Table 3.1 Lawyer involvement in the major schemes

	Date established	Participating lawyers (June 97)
Law Society Pro Bono Scheme	July 1992	225 firms
Bar Assocn Legal Assistance Scheme	April 1994	1,100 barristers (approx)
PILCH	July 1992	32 firms 2 floors of barristers 9 individual barristers

3.2.3 Community legal centres

Many lawyers help community legal centres by staffing advice sessions or by accepting clients referred by centres on a pro bono basis. In 1997, it was estimated that over 1,500 lawyers volunteer at legal centres around Australia.[7] A study by the Office of Legal Aid and Family Services in 1991 found that the contribution by volunteer lawyers to some legal centres is equivalent to the work of an extra four full-time staff.[8] It is difficult to assess the amount of work accepted by lawyers from legal centres but anecdotal evidence suggests that it is significant.

3.2.4 Private pro bono work

There have been three specific attempts to measure private pro bono work done by solicitors—an inquiry by a task force and two surveys by the Law Society of NSW. While barristers do private pro bono work there is no ready data on the amount of such work.

Law Society of NSW Pro Bono Task Force

In 1991 the Law Society of NSW set up a Pro Bono Task Force. To obtain information about the amount of pro bono work being undertaken by solicitors, the Task Force undertook limited surveys of particular firms. The survey defined 'pro bono work' as meaning

> *...work done for no fee or at a substantially reduced rate for those who would otherwise be unable to defend or assert their lawful interests and rights, or of the nature described in (d) or (e) below.*
>
> *(d) Non-profit organisation: Legal assistance to non-profit organisations, educational institutes or statutory bodies in matters which further their public service charters but where the payment of customary legal fees would deplete their resources or be otherwise inappropriate.*
>
> *(e) Administration of Justice: Activity which is designed to increase the availability of justice, improve laws and the legal system, or otherwise improve the administration and dispensation of justice.*[9]

The survey asked solicitors whether they did any pro bono work as defined in the survey and the approximate percentage of time they spent engaged in that work. The survey also asked for details of any other work which the respondent solicitors would regard as pro bono work.

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[7] National Association of Community Legal Centres *Annual Report 1996-1997* NACLC August 1997, 31.

[8] Office of Legal Aid and Family Services *Community Legal Centres: A study of four centres in New South Wales and Victoria* Attorney General's Department Canberra 1991, 101.

[9] Pro Bono Task Force Report *The Legal Profession-Commitment to Pro Bono Work: A Report to the Council of the Law Society of New South Wales* (Pro Bono Task Force Report) Law Society of New South Wales Sydney, 29.

The Task Force found that the information it had, while insufficient for it to draw any final conclusions on the contribution of private lawyers to pro bono work, indicated that the contribution was considerable but spread unevenly across the profession.[10] It also found that the work appeared to take a number of forms, including legal work for non-profit organisations performed at a substantial discount or at no charge, subsidised or free work for indigent persons, attendance at community legal centres or legal advice centres, and cash or in-kind donations to community legal centres.[11]

Law Society of NSW Survey, 1992

In 1992 the Law Society conducted a survey of its 11,600 members and received 422 responses.[12] Members were asked to indicate the proportion of time they spent on:

- providing legal assistance for no or substantially reduced fees in civil and criminal matters to clients who do not have the financial resources to pay for legal representation and who do not have a grant of legal aid
- providing legal assistance for no or substantially reduced fees in matters involving a right of an individual or class of persons which society has a special interest in protecting
- providing legal assistance for no or substantially reduced fees in matters involving important rights or interests of the public or a significant section of the public
- providing legal assistance to non-profit organisations, educational institutions or statutory bodies in matters which further their public service charters but where the payment of customary legal fees would deplete their resources or be otherwise inappropriate
- activity designed to increase the availability of justice, improve laws and the legal system, or otherwise improve the administrative and dispensation of justice
- other activities regarded by the member as being pro bono work (which included such things as working with community organisations, speaking engagements, newspaper columns and so on).

The respondents indicated that they spent an average of 10 per cent of their time on one or more of these activities. Unfortunately, the low response rate to the survey (3.64%) means its findings must be treated with caution.

Law Society annual practising certificate survey, 1997

In 1997, the Law Society incorporated questions about pro bono work in its practising certificate survey. The questions asked for information about the number of matters currently being conducted by the practitioner on a pro bono basis and the number of hours spent by the practitioner on pro bono matters in March 1997. Pro bono work was defined as 'work performed free or for substantially reduced fees, for somebody who cannot afford to pay full market rates or for an organisation working for disadvantaged groups or for the public good'.

Survey responses were received from 8,675 practitioners - approximately 62% of all solicitors who applied to renew their practising certificate in 1997. Around half of the respondents (4,431) said that they were *not* currently conducting any pro bono

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[10] id. 6

[11] id. 7

[12] Details of the survey are set out in Law Society of NSW *Pro Bono – 'For the public good'* Law Society of NSW, September 1995

matters. One third of respondents (2,898) stated that they were currently conducting *between one and five* pro bono matters while 8% (719) were currently handling *more than five* pro bono matters.[13] Seven per cent of respondents (627) did not indicate whether they were currently conducting any pro bono matters.

Respondents who were currently conducting pro bono work were most likely to be found in private practice or working for community legal centres. Within private practice, a majority of respondents working in country firms, sole practitioners, those who were partners in a law firm and those in firms with 1-4 partners said they were currently doing pro bono work.[14]

The Law Society report concluded

> *On the basis [of the survey results], it would be reasonable to conclude that around 10 hours per month was the average time that solicitors who did pro bono work spent on that work in March 1997. The* total *number of Law Society members who spent time on pro bono work that month could be estimated at around 6,300... This would imply a total pro bono effort of some 63,000 hours that month.*[15]

3.3 Law Society of NSW Pro Bono Scheme

3.3.1 Objectives

The Law Society's Pro Bono Scheme was established in July 1992 to provide free or reduced fee legal assistance or representation to members of the public who are unable to afford the full cost of legal services. The Law Society also aims to foster pro bono work so that it becomes an accepted part of legal practice.

3.3.2 Management

The Scheme operates as one of the services of the Law Society's Community Assistance Department. The Scheme is managed by the Manager of the Community Assistance Department with the day-to-day administration and coordination of the Scheme being the responsibility of the Pro Bono Solicitor.

3.3.3 Staffing

The Scheme has a full-time Pro Bono Solicitor and three part-time support staff (the equivalent of one full-time position).

3.3.4 Funding and resources

The Scheme receives funding from the Law Foundation of NSW. It also receives support from the Law Society in the form of an exemption from paying rent and depreciation on its computers and other equipment. The Department provides management support, system support, and legal, paralegal and client support. The Scheme also has access to the various office and other services provided by the Department and by the Law Society.

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[13] Keys Young *Practising Certificate Survey 1997-98 Final Report* (Prepared for the Law Society of New South Wales) September 1997, 32.

[14] ibid.

[15] id. 33

Table 3.2 Funding of the Law Society Pro Bono scheme

	Law Foundation funding	Law Society in kind
1995/96	$107,500	$4,240
1996/97	$101,300	$4,240

As at 30 June 1997 the Scheme had a register of 225 firms.

3.3.5 Operation

Members of the public (either directly or through a referring agency) apply to the Scheme by way of an application form setting out the details of their case and their personal circumstances. Each application is assessed by the Pro Bono Solicitor to see if it is within the Scheme's guidelines. The applicant must have been refused legal aid and must also satisfy the Scheme's means and merits tests. If the application is successful the matter is referred to a firm on the Pro Bono Register maintained by the Scheme which has the necessary expertise to conduct the matter. In some complex cases the Pro Bono Solicitor will refer the matter to counsel for an opinion. The Pro Bono Solicitor often provides legal advice to clients and, in urgent cases, legal assistance.

When a matter is referred to a firm, the Pro Bono Solicitor sends the firm a summary of the case, the client's details and supporting material. Participating firms may act for clients referred by the Scheme for free or at a reduced fee. Where the firm has agreed to conduct the matter for a reduced fee rather than for free, the Pro Bono Solicitor will confirm the fee basis. The firm's designated solicitor then reviews the case in detail. If they decide that they have the necessary expertise and resources to conduct the case, they will advise the Scheme. The Scheme then writes to the client and provides them with the firm's contact details. The Scheme also informs the client if any fee will be payable and advises them to enter into a suitable costs agreement.

The Scheme assists participating firms in a number of ways. For example, firms that accept a matter under the Scheme may apply to the Pro Bono Disbursements Fund, subject to its guidelines, for reimbursement of costs incurred by or on behalf of the client. They may also have access to the Scheme's Pro Bono Mediation Register and to the Scheme's Pro Bono Medical Register (a list of specialists willing to provide medical reports on a pro bono basis). Firms are asked to provide feedback to the Scheme at the conclusion of each matter.

3.3.6 Summary of referrals

Table 3.3 Summary of referrals by the Law Society Pro Bono Scheme

	Applications	Referrals	Not referred	Reason for non-referral
1995/96	530	114	416	199 outside guidelines 217 other
1996/97	787	321 (plus 9 referred on a non-pro bono basis)	457	279 outside guidelines 158 client withdrew or ceased contact 20 unable to find a lawyer

3.4 NSW Bar Association Legal Assistance Scheme

3.4.1 Objectives

Formal arrangements to administer requests for pro bono assistance were introduced by the Bar Association in April 1994. The NSW Bar Association Legal Assistance Scheme provides free legal assistance for persons who cannot otherwise obtain legal assistance without incurring severe financial hardship. The Scheme encompasses the provision of free legal advice, which may extend to a second opinion from senior counsel and may allow for an urgent appearance in Court.

3.4.2 Management

The Scheme is part of the administrative structure of the NSW Bar Association and is managed by the Legal Assistance Scheme Manager.

3.4.3 Staffing

The Scheme has a Manager who assesses each application on an overall and financial, but not legal, basis. If the application is successful, the Manager then finds suitable counsel. Where an applicant does not have a brief prepared by a solicitor, the Manager will compile such a document for him or her. The Manager is also responsible for any further liaison with the client and counsel. The Scheme has a part-time assistant who updates statistics and performs various administrative tasks. The assistant works 3 days per week.

3.4.4 Funding and resources

The Scheme was funded by the Bar Association until early 1996 when, in light of the increasing demand for assistance, it successfully applied to the Law Foundation for funding. The Scheme is accommodated within the Association and, as part of the Association's administrative structure, has access to its office systems and other support.

Table 3.4 Funding of the Bar Association Legal Assistance scheme

	Law Foundation funding	**Bar Association in kind**
1995/96	$37,500 (for the six months to June 1996)	$5,712
1996/97	$69,433.29	$5,712

As at 30 June 1997 the Scheme had a register of almost 1,100 barristers willing to accept referrals.

3.4.5 Operation

Members of the public may apply to the Scheme directly or through a referring solicitor or agency. Where possible, each applicant is interviewed by the Legal Assistance Scheme Manager to ascertain his or her degree of need and the type and level of assistance required. Counsel is then found to determine the legal merit of the matter or, in urgent cases, to appear in court. Where the initial advice is that the case lacks legal merit, the Scheme may arrange for a second opinion to be obtained from

senior counsel. In appropriate cases the Scheme may arrange for counsel to act as a mediator and for counsel to represent the applicant, in each case for no fee for up to four hours. Beyond four hours, fee is by agreement.

Once counsel has provided advice on the legal merit or attended court, the matter is re-assessed in terms of the applicant's ability to pay. This determines whether the matter will continue to be handled for free, for a reduced fee, on a speculative fee basis or on a full fee by instalment basis. Counsel are asked to complete and return a short report at the conclusion of each matter.

The Scheme will provide some case support to counsel, including liaison with the client where necessary. In some cases the Legal Assistance Scheme Manager will help the client find an instructing solicitor. Other support provided by the Scheme includes access to the Law Foundation Pro Bono Disbursements Fund and negotiating with Courts and transcribing authorities to provide judgments and transcripts for free or at reduced rates to persons assisted under the Scheme.

The Scheme has approached accountants for assistance on a no fee basis in individual matters, and has started to compile a list of non-legal experts willing to provide their services for free or for a reduced fee.

3.4.6 Summary of referrals

Table 3.5 Summary of referrals by the Bar Association Legal Assistance Scheme

	Applications	Referrals	Not referred	Reason for non-referral
1995/96	147	143	4	Applicants failed to satisfy eligibility criteria, failed to provide further information or were too late in requesting assistance
1996/97	230	194	36	

3.5 Public Interest Law Clearing House (NSW)

3.5.1 Objectives

PILCH was established in 1992 by the Law Society of New South Wales, law firms and the Public Interest Advocacy Centre (PIAC). Its main aims are to deliver quality pro bono legal assistance to eligible organisations and individuals who require such assistance to address matters of public interest, and in so doing to expand access to such services and promote a pro bono culture throughout the legal profession. Its other aims and objectives include:

- to identify matters of public interest which warrant legal assistance *pro bono publico* ('for the common good')
- to identify the legal needs of non-profit organisations
- to match disadvantaged and under-represented individuals and groups who have a need for otherwise unavailable legal assistance with PILCH member firms
- to utilise the diverse skills and resources of law firms in a broad range of public interest matters

- to expand the participation of private practitioners in the law reform process, whether by way of litigation or policy work
- to seek the integration of pro bono work with legal practice
- to encourage cooperation between private practitioners and public interest lawyers.

3.5.2 Management

PILCH is an incorporated association which operates as an independent, non-profit organisation. It is managed by a Board of Directors drawn from its members. Day-to-day operations are overseen by PIAC pursuant to a management agreement with PILCH.

3.5.3 Staffing

A number of PIAC staff are involved in the PILCH Secretariat. These include the PILCH Coordinator (part-time), two part-time solicitors and a part-time administrative assistant. From time to time member firms provide solicitors on secondment to PILCH for periods of 3 to 4 months.

3.5.4 Funding and resources

In 1996/97 PILCH had an income of $64,187. The bulk of this income derives from membership fees. Approximately $5,000 represents revenue from functions. Additionally, the sum of $31,680 was received from the Law Foundation to support PILCH's Stolen Generation Project. PILCH's rent and related office costs are subsidised by PIAC, with whom PILCH shares premises and staff.

Table 3.6 Funding of PILCH

	Income	**PIAC in-kind support** [16]
1995/96	$56,900	$11,000
1996/97	$64,187 (excluding Law Foundation project funding)	$19,007

As at 30 June 1997 PILCH had 32 member firms, 2 floors of barristers and nine individual barristers participating in its scheme. It also had five associate members.

3.5.5 Operation

Individuals and organisations may apply to PILCH directly or through a referring agency. Applications are assessed by PILCH staff for compliance with the scheme's eligibility criteria. The client must be a non-profit organisation or an individual who has been refused or is ineligible for legal aid. The case must also concern a legal matter of public interest.

If the eligibility criteria are satisfied, PILCH prepares and sends a referral brief to a member having the appropriate expertise. If the member accepts the brief, PILCH facilitates the client's relationship with the member and then monitors the matter

[16] PIAC is currently reviewing the methods used to quantify its assistance to PILCH. These figures are the amounts that PILCH should have paid PIAC under its Management Agreement but which PIAC agreed to forego because of a growing caseload not matched by an increase in revenue at PILCH.

until its conclusion. Where the criteria are not satisfied, PILCH endeavours to refer the client to an appropriate agency.

PILCH supports its members in a number of ways. Like lawyers participating in the other schemes, PILCH members are able to apply to the Pro Bono Disbursements Fund for assistance with costs incurred by or on behalf of assisted clients. PILCH will help collate material, undertake research, liaise between clients and members, secure pro bono counsel and organise training where necessary. Members may also obtain assistance from PILCH associate members who include LEADR (Lawyers Engaged in Alternative Dispute Resolution) and a number of accounting firms. In some cases PILCH will secure other expert assistance on a pro bono basis.

In 1996/97 PILCH received 266 requests for assistance, of which 86 were referred to a member for assistance. Matters not referred were those where the applicant failed to satisfy the eligibility criteria or did not pursue the application.

3.5.6 Summary of referrals

Table 3.7 Summary of referrals by PILCH

	Applications	Referrals	Not referred	Reason for non-referral
1995/96	220	54	166	Failed to satisfy eligibility criteria or client did not pursue application
1996/97	266	86	180	

3.6 Comparison between the major schemes

3.6.1 Introduction

The three major New South Wales schemes - the Law Society and Bar Association Schemes and PILCH - operate as assessment and referral agencies. Through their eligibility tests and guidelines they identify cases which qualify for legal assistance and refer those cases to participating lawyers. Only one of these schemes, the Law Society Scheme, describes itself as a pro bono scheme.

The operation of these schemes is summarised in the following tables. Some aspects will be examined in more detail later in the report.

3.6.2 Services provided by the schemes

Table 3.8 sets out the services provided under each scheme.

The main service provided by each scheme is referral to a lawyer with the appropriate legal expertise. The schemes also provide other support, such as assistance with disbursements and access to expert witnesses.

Table 3.8 What services are provided under each scheme?

Bar Association	**Law Society**	**PILCH**
referral to barrister for an initial advice	referral to participating firms for legal assistance or representation	assessment and referral to solicitor or barrister for legal assistance
referral to barrister for an urgent appearance	legal assistance in urgent matters	
preparation of referral papers	preparation of referral brief	preparation of referral brief
assistance with costs through: - access to Law Foundation Pro Bono Disbursement Fund - negotiation with courts and transcribing agencies for provision of judgements and transcripts for free or at reduced rates - referral to a participating barrister for mediation - has started to compile a list of non-legal experts willing to provide their services for free or at a reduced fee	assistance with costs through access to Law Foundation Pro Bono Disbursement Fund	assistance with costs through access to Law Foundation Pro Bono Disbursement Fund
	maintains a register of mediators and medical experts who will provide their services on a pro bono basis	assessment and referral to services of accountants and mediators through associate membership of scheme
case support (eg liaison with client, provision of a solicitor)	access to barristers through the Scheme's relationship with the Bar Association scheme	case support (eg research)
counsel are asked to complete and return a short report at end of matter	firms are asked to provide feedback at end of matter	monitoring of referrals through to resolution of matter
		training on special issues
ongoing assistance depending on arrangement between barrister and client		
		where applicants fail to meet eligibility criteria, they are referred to the most appropriate agency where possible

3.6.3 The basis of legal assistance provided under each scheme

Table 3.9 On what basis is assistance provided?

Bar Association	Law Society	PILCH
after initial advice or representations for no fee, further assistance may be provided on a free, reduced fee, speculative fee or full fee by instalment basis	assistance may be provided for free or at a reduced fee	In the majority of cases, referrals are accepted on a no fee basis. If the matter proceeds to litigation and disbursements are to be incurred, the client and PILCH member may enter into an arrangement whereby the client makes a contribution. The underlying goal is for services to be provided free of charge.

3.6.4 Eligibility for assistance

Table 3.10 Who is eligible for assistance under each scheme?

Bar Association	Law Society	PILCH
client must have made reasonable attempts to obtain assistance from other sources, such as legal aid	client must have been refused legal aid	clients (other than non-profit organisations) must have been refused or be ineligible for legal aid
client must satisfy a means and merits test	client must satisfy a means and merits test	client must satisfy a merits test, and in the case of individuals, be of insufficient means to afford requisite legal services
	the matter must fall within particular areas of law [17]	the case must concern a legal matter of public interest [18]

3.6.5 Ensuring quality legal services

Table 3.11 sets out how the schemes approach the issue of quality. A central strategy for each scheme is to ensure quality of service by referring clients to lawyers with the appropriate expertise.

Although there are currently no practice rules or guidelines in place that deal specifically with the issue of quality in pro bono legal services, as a matter of professional conduct lawyers have the same obligation towards pro bono clients as paying clients. In some law firms this obligation has been incorporated into written protocols for dealing with pro bono matters.

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[17] These categories are quite wide-ranging but exclude business law (except in special circumstances), intractable neighbourhood disputes and family law property settlements (again, save in exceptional circumstances), workers compensation, and personal injury and professional negligence (on normal or conditional fee basis).

[18] This is defined as a matter that:

(i) affects a significant number of people

(ii) raises matters of broad public concern

(iii) particularly impacts on disadvantaged or marginalised groups

(iv) requires addressing *pro bono publico* ('for the common good').

Pro bono clients are also protected by regulatory controls. This means that a client whose case is being handled on a no fee basis has the same right to make a complaint to the Legal Services Commissioner as does a full fee paying client.

Table 3.11 How do the schemes ensure quality in the provision of legal services?

Bar Association	**Law Society**	**PILCH**
referrals are made to barristers with appropriate expertise	referrals are made to solicitors with appropriate expertise	referrals are made to legal practitioners with appropriate expertise
		following referral, PILCH staff attend an initial meeting with the client and member to facilitate the establishment of the professional relationship and ensure that all parties are in agreement as to the parameters of the legal services to be provided
usual professional conduct rules apply	usual professional conduct rules apply	usual professional conduct rules apply
client may make a complaint in the usual way to the Legal Services Commissioner	client may make a complaint in the usual way to the Legal Services Commissisoner	client may make a complaint in the usual way to the Legal Services Commissioner
counsel are asked to complete a short report at the conclusion of a matter	solicitors are asked to provide feedback to the Scheme at the conclusion of the matter	PILCH monitors cases through to completion by seeking feedback from client and practitioner

3.6.6 The schemes' resources and workload

Table 3.12 sets out the income, staffing and other resources of each scheme while table 3.13 indicates the number of applications for assistance and referrals in 1996/97.

Table 3.12 What resources are available to the schemes?

Bar Association	Law Society	PILCH
funded through the Law Foundation of NSW	funded through the Law Foundation of NSW	funded by membership fees, training, seminars and publications
income of $69,433 in 96/97	income of $101,300 in 96/97	income of $64,187 in 96/97
in-kind support through being located at Bar Association offices	in-kind support through being located within Law Society Community Assistance Department	in-kind support - through sharing premises with the Public Interest Advocacy Centre - from member firms which second solicitors, and support and host training, seminar, promotional and fundraising events - from joint venture partner the Law Society of NSW through hosting of launches, seminars and Annual General Meeting
staffed by a full-time manager and part-time assistant	staffed by a full-time solicitor and the equivalent of a full-time administrative support position	staffed by a full-time coordinator, 2 part-time solicitors and a part-time assistant
register of 1,100 barristers	register of 225 firms	current membership (February 1998) consists of 34 legal firms, 2 floors of barristers, 17 individual barristers and 4 associate members

Any comparison between the schemes must be handled cautiously. In particular, the Bar Association's referrals relate only to initial advice on the merits of the case or urgent representation in a court or tribunal. They do not necessarily describe the number of cases where ongoing assistance is provided.

Table 3.13 Number of referrals in 1996/97

Bar Association	Law Society	PILCH
230 applications received	787 applications assessed and finalised	266 enquiries for assistance received
194 referrals made	321 referrals made	86 referrals made

3.6.7 Cost per referral

The information in tables 3.12 and 3.13 might suggest that the legal assistance schemes are relatively expensive to operate. For example, in 1996/97, the Law Society Pro Bono Scheme referred 321 cases to participating practitioners. Comparing this against their income from the Law Foundation of $101,300, this means that the Scheme had to spend a little over $300 before making a referral. However, it is important to note that much of this cost is absorbed in processing unsuccessful applications. While the Law Society Pro Bono Scheme, for example, referred 321 matters it actually reviewed 787 applications. Looked at this way, the Scheme spent $129 per matter.

Table 3.14 Cost per referral 1996/97

	Bar Association	Law Society	PILCH
1996/97	$358	$316	$746

3.7 Other schemes

3.7.1 Introduction

In addition to direct pro bono work and the major schemes, a number of other mechanisms facilitate access to legal services.

3.7.2 Community legal centres

Most community legal centres operate free advice sessions staffed by voluntary lawyers. Some of the major law firms second staff to particular legal centres. Many firms and barristers will assist clients referred by centres on a free or reduced fee basis. Legal centres are also a source of referrals to the schemes operated by the Law Society, Bar Association and PILCH.

3.7.3 Court duty rosters and '*amicus curiae* lists'

Many solicitors and barristers support court duty rosters established to provide legal representation to people who are not eligible for legal aid but cannot afford assistance. In some cases a duty lawyer will provide their services for free, in other cases a reduced fee will be charged. For example, the City of Sydney Law Society in December 1996 launched a new pro bono duty roster at the Downing Centre Local Court in Sydney. The New South Wales Bar Association organises a duty barrister scheme which operates in particular Local and District Courts. The Parramatta and Regional Law Society and the Inner West Law Society also coordinate rosters of duty lawyers at courts located within their region.

A number of lawyers will appear as a 'friend of the court' for no charge where the court considers an unrepresented litigant would otherwise be at a disadvantage. For example, the Chief Judge of the Land and Environment Court has established a list of *amicus curiae*, comprising members of the Bar Association and Law Society who frequently appear in the Court. On occasion, these lawyers have been called on by the Court to assist unrepresented litigants facing an environmental prosecution.[19]

3.7.4 Local advice services

There is a range of local legal advice services. These services, often based in neighbourhood centres and hospitals, also rely on the support of local lawyers. An example is the Manly Warringah Legal Advice Service that has operated for over 20 years. It runs offices out of neighbourhood centres in both Manly and Dee Why giving legal advice and referral to clients.[20] Similar services operate at Chatswood, Coffs Harbour, Kirribilli, Lismore, North Ryde and Orange.

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[19] Letter from the Chief Judge of the Land and Environment Court, 23 July 1996.

[20] "North Shore Law" *Law Society Journal* March 1995, p 87

3.7.5 Special needs

In some cases lawyers provide pro bono services to specific types of clients with special needs. The involvement of lawyers in these cases can come about through a variety of circumstances, sometimes simply through a personal interest in an issue. Some examples are:

- In 1992, two solicitors with the Refugee Council, faced with the task of trying to assist a large number of Cambodian and Vietnamese boat people detained at Port Hedland, organised law firms and counsel to represent each boat person and assist them with applications for refugee status.[21]
- The Environmental Law Community Advisory Service in South Australia launched a pro bono scheme in 1993 to assist with environmental matters. The scheme consisted of a voluntary panel of firms and barristers who were available to take on matters of public importance for no fee or on a reduced fee basis.[22]
- In 1993, the Chairman of the Consumer Law Committee of the Law Council's General Practice Section was involved as a media commentator on consumer issues, such as those arising from the New South Wales HomeFund Scheme. As a result of these activities, members of the Consumer Law Committee decided to make themselves available to the media, on a pro bono basis, to comment on the legal aspects of consumer issues.[23]

3.8 Direct pro bono

The results of the Law Society's 1997 Practising Certificate Survey (referred to in section 3.2.4 above) and anecdotal evidence support the proposition that most pro bono legal services in New South Wales are provided directly to clients without the involvement of any formal scheme. Little is known about how clients obtain access to these services. Many lawyers have established their own networks or profile in the community. Others have particular relationships with community organisations, hospitals, legal centres or other agencies which direct requests for assistance to them.

A growing number of firms have developed their own systems for fulfilling their pro bono obligations. For example:

- establishment of a pro bono committee to screen and monitor the firm's pro bono work. This includes ensuring that pro bono matters comply with the firm's guidelines, screening and approving pro bono projects, monitoring and reviewing the firm's pro bono program and reporting to the firm on a regular basis
- creation of a full-time position to manage a firm's pro bono work
- allocation of a budget for pro bono work
- requiring all solicitors within the firm to conduct at least one pro bono matter per year
- staffing particular advice services at community legal centres
- secondment of solicitors to legal centres for several months at a time.

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[21] "Lawyers Organise Refugee Rescue" *Law Society Journal*, December 1994, p 95

[22] "ELCAS Launches Pro Bono Scheme" *Law Society Bulletin*, April 1993, p 17

[23] "LCA Group Offers Pro Bono Scheme" *Australian Lawyer*, September 1993, p 43

3.9 Conclusion

Lawyers make a significant contribution to pro bono work either directly to clients or by making their services available to formal pro bono schemes and community legal centres. The nature of the work provided in this way covers a wide range of litigious and non-litigious matters as well as law reform and other activities requiring legal skills. However, the exact extent and nature of pro bono work in New South Wales cannot be ascertained without a comprehensive survey of the profession. The need for a comprehensive survey, and for ongoing data collection, about pro bono legal services is discussed in chapter 6.

Chapters 4 and 5 now discuss the major themes which emerged from the study.

4

Modernising traditional pro bono practice

4.1 Introduction

Legal services provided 'pro bono publico' are, literally, services provided 'for the public good'. There is, however, no universal view on what this means in practice, particularly in the face of quite dramatic changes to the structure of the legal services industry. *Modernising traditional pro bono practice* emerged as a major theme from the research, and refers to the need to establish a definition of and role for pro bono legal services within contemporary legal practice. Three specific aspects of this theme are discussed here:

- what services constitute pro bono work, legal and non-legal
- what remuneration, if any, a lawyer may accept for pro bono work
- the relationship between legal aid and pro bono services.

Linked with the theme of *modernising traditional pro bono practice* are the issues of *accessibility* of pro bono services and *quality* of services. These issues are also discussed in this chapter.

4.2 Background

As has been pointed out by the Chief Justice of Australia, 'there is nothing new about pro bono schemes'.[24] The provision of free legal services to disadvantaged clients has historically been regarded as part of a lawyer's professional duty.[25] However, with the growing demand for legal services and the reduced availability of legal aid, pro bono legal services are likely to be the focus of growing attention.

Changes in the legal environment are also occurring, and these are likely to affect the capacity of the legal profession to provide free or reduced fee legal services. In recent years the legal profession has been exposed to greater competition both from within its own ranks and from non-lawyers, such as conveyancers and tax advisers, who have entered the legal services market. Increased competition has forced many lawyers to reduce their profit margins and to increase the amount of full fee paying work. This in turn has reduced the capacity of many lawyers to perform work for no, or a substantially reduced, fee.

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[24] Letter to the Centre for Legal Process from the Hon Murray Gleeson AC, Chief Justice, 31 July 1996.

[25] See D Robertson 'Poor laws - a history' *Alternative Law Journal* Vol 19 No 1, February 1994.

The application of competition principles to the legal profession also has the potential to change the attitude of lawyers towards pro bono service. As one submission to this project noted:

> *Government must accept that by forcing professions to open up their work practice to competition from other professions and trades, the concomitant ideal of service back to the community and protection of the powerless will diminish, if not disappear.*[26]

Competition, assisted by new statutory requirements concerning the provision of detailed costs agreements, may lead to reductions in the costs of some legal services. However, it is not clear whether, or to what extent, these reductions will lead to an increase in the number of people who can afford legal services. It is possible that some people who may have previously relied on legal aid or free legal services will now be able to negotiate a fee for legal services which is within their means.

It is against this background of change that the structure and role of pro bono legal services need to be examined.

4.3 What services constitute pro bono work?

Participants in the study identified two types of work as possibly falling within the expression 'pro bono work': work which involves the exercise of professional legal skills, and work which is in the nature of general civic activity. One submission favoured including both types of work within the definition of 'pro bono work':

> *We would not wish to see a definition of pro bono work limited solely to the exercise of professional legal skills, as many lawyers are involved in delivering expertise to the community in other areas, with skills that may have been developed as a result of their professional careers. For example, many lawyers serve on Boards associated with community groups. Apart from providing legal advice, life skills can be involved such as organisation, promotion, ability to listen and to disseminate information succinctly.*[27]

Two other submissions made the point that general civic activity should be recognised as validly being part of pro bono work performed by lawyers but that the provision of these services should not form part of the work of the pro bono schemes.

The more common view amongst participants in the study, however, was that a definition of pro bono work should be limited to professional legal services. Typical of the responses to this issue are the following:

> *The definition of 'pro bono' should be limited to the exercise of professional legal skills. If the definition were broader, there seems to be little point in having the term at all since every form of charitable or community work would be 'pro bono work' since the occupation of the worker would be irrelevant.*[28]

> *In my view, pro bono legal work should be defined so it includes only the exercise of professional legal skills. While many lawyers make other broader community contributions, other professionals do the same. In any event, it seems inappropriate to me to classify those broader contributions as pro bono legal work.*[29]

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[26] National Legal Aid *Submission* 4.

[27] ibid.

[28] Mr P Jeffares *Submission* 2.

[29] Mr R Cornall *Submission* 13.

This view was also supported by the Project Advisory Panel and reflects the approach taken by the major pro bono schemes operating in New South Wales. It is also supported by the literature.[30]

It is important to note that 'professional legal services' can encompass a wide range of activities which draw upon a lawyer's legal training, experience and skills. Several submissions referred to the importance of recognising law reform advocacy as 'pro bono work'. For example:

> *We are particularly concerned with the lack of access to justice for disadvantaged and marginalised groups. We do see the benefit of including law reform and systemic change in pro bono activities which are aimed at benefits for the same target group and have a clear legal focus.*[31]

> *Providing pro bono resources through community legal education, or in working for law reform that will make the law more accessible to, or supporting the rights of, disadvantaged people under the law is a major aspect of pro bono work.*[32]

This view is supported by the Pro Bono Task Force Report, which recommended to the Law Society Council a policy on pro bono work that would include work for the improvement of the law or the legal system.[33] The Marrero Committee in New York, USA took a similar approach, and saw lawyers' professional responsibilities as extending to a responsibility to promote the legitimacy, efficacy and equity of the legal system itself. It proposed that pro bono legal services should include

> *Activities related to improvement of the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to, poor persons.*[34]

The majority of participants in the project were of the opinion that only 'professional legal services' should be regarded as pro bono work. However, both the research findings and previous reports support the view that 'professional legal services' include activities designed to improve particular laws or aspects of the legal system, as well as legal advice and representation.

4.4 On what basis should pro bono legal services be delivered?

Participants in the study identified three different bases on which pro bono services could be delivered:

- for free
- at a substantially reduced fee
- on a speculative or contingency fee basis.

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30 See, e.g., Pro Bono Task Force Report, 2; WD McGrath 'Pro bono myths and realities' *Illinois Bar Journal* Vol 83 No 1 (January 1995) 30.

31 Intellectual Disability Rights Service, Inc *Submission* 3.

32 Response to the *Survey of Law Deans* by the University of Wollongong.

33 Pro Bono Task Force Report, 6.

34 V Marrero *Committee to Improve the Availability of Legal Services Final Report to the Chief Judge of the State of New York* (the Marrero Report) New York 1990, 49.

4.4.1 Work performed for a reduced fee

Few submissions discussed the issue of whether work performed for a substantially reduced fee should be regarded as pro bono work. One participant who did raise this issue made the following point:

> *Generally, there is now a very complex environment regarding fees charged by solicitors depending on the matter and the arrangement between client and solicitor. For example, in a deregulated environment it is now possible for any client to negotiate a substantially reduced fee. This can make nonsense of regarding reduced fees as pro bono work and it is perhaps time to consider whether pro bono work should comprise only free legal services for those in need.*[35]

The NSW Bar Association Legal Assistance Scheme Guidelines exclude reduced fee work, in that the purpose of the Scheme is to provide free legal assistance. However, in a number of jurisdictions it seems to be accepted that work performed for a substantially reduced fee can be regarded as pro bono work. For example, the Pro Bono Task Force recommended that, for a lawyer's obligation to deliver pro bono work to be satisfied, the work should be for free or at substantially reduced charges.[36] A similar view is taken by the American Bar Association and the Law Society of England and Wales:

- The American Bar Association Model Rule 6.1 states that a lawyer should aspire to render at least fifty hours of pro bono publico legal services per year and that, to fulfil this responsibility, the lawyer should provide a substantial majority of those services without fee or expectation of fee. The remainder of the fifty hours can consist of, inter alia, legal services provided at a substantially reduced fee.[37]
- The Law Society of England and Wales suggested that voluntary legal services be defined as including services which are 'provided either free or at a significantly reduced cost'.[38]

4.4.2 Award of costs

Where a person who is receiving legal assistance on a free or reduced fee basis is successful, his or her lawyer may decide to seek a costs award against the unsuccessful party. In most cases the costs recovered in this way do not satisfy all the legal and associated costs of the matter, as they are on a party/party basis.

It was argued by some participants in this study that a pro bono lawyer should be entitled to recover costs on the ground that it would be unjust for an unsuccessful party to escape liability for the other party's costs merely because that other party was represented on a pro bono basis.

As one submission noted:

> *The pro bono element of the service is still met because, without the provision of the service, the outcome would never have been achieved. It is not appropriate in such circumstances that the client should receive a windfall, which is not available to other members of the community.*[39]

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35 Law Society Pro Bono Scheme *Submission* 10.

36 Pro Bono Task Force Report, 6.

37 WD McGrath 'Pro bono myths and realities' *Illinois Bar Journal* Vol 83 No 1 (January 1995) 30, 31.

38 The Law Society Solicitors Serving Society: *The Report of the Pro Bono Working Party* The Law Society London 1994, 5.

39 Freehill, Hollingdale & Page *Submission* 5.

On the other hand, the purpose of a costs order is to indemnify the successful party in respect of legal costs and disbursements incurred in litigating. A recent opinion from Senior Counsel provided to the New South Wales Bar Association Legal Assistance Scheme ('the opinion') discussed the situation of a practitioner who agrees to act on a "no fee" basis, succeeds in winning the case and obtains a costs order in favour of their client. The opinion takes the view that, as no costs are incurred by the successful party because their legal representative undertook to perform the work for free, there are no costs in respect of which an indemnity can operate. (The question of disbursements was specifically excluded from this analysis.)

However, this outcome turns on the drafting of the costs agreement. The opinion argues that a conditional costs agreement could be drafted so that there is an entitlement to costs in the event that a costs order is made and recovery is effected from the losing party. Provided that the basis on which fees will be charged and the condition on which they will become payable are clearly spelled out, and payment is sought in accordance with the terms of the agreement, the winning party's legal representative will be entitled to recover costs following the making of a costs order. According to the opinion, a pro bono scheme could include referrals that were undertaken on such a basis.

4.43 Speculative or contingency fees

An issue arises, however, as to whether work performed pursuant to a speculative or contingency fee arrangement should be considered as pro bono assistance. Speculative and contingency fee arrangements arise where a litigant and his or her lawyer agree that the lawyer will receive no remuneration for the work he or she performs unless the litigation is successful. These types of fee arrangements are commonly used by plaintiffs' lawyers in personal injury cases and, less frequently, in other claims for damages. They are rarely used where non-monetary relief such as a declaration or injunction is sought. In these arrangements the lawyer bears the costs if the action is unsuccessful, and recovers them out of the damages award or costs order in favour of the client if the action succeeds.

On the one hand, participants argued that lawyers providing services on a speculative or contingency fee basis are performing pro bono work because their clients would otherwise not be able to afford legal representation and the lawyers will have acted for no fee if the matter is unsuccessful. One submission noted that it:

> *….is entirely appropriate for the retainer on a pro bono basis to operate by way of a waiver of the liability to pay [the lawyer's costs] in the event that, at the conclusion of the matter, circumstances do not change and the client's inability to contribute to the lawyer's usual fee remains.... This preserves the integrity of the principle that services are provided pro bono to the extent to which the client does not have the means of paying or contributing to the usual fees.*[40]

On the other hand, speculative and contingency fee arrangements are usually only offered by a lawyer after careful consideration of the case's fee-earning potential, and require the client to pay at least a proportion of costs from the final award of damages. That is, the work is undertaken for commercial reasons rather than for the 'public good' and, where the case is successful, at no cost to the lawyer. As one participant noted:

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[40] ibid.

> *In my view, legal work undertaken for a speculative, conditional or contingency fee is undertaken on the basis of business and commercial considerations. I do not believe it is properly classified as pro bono work.*[41]

One way of addressing this issue is to look at the lawyer's motivation for providing his or her services. (This is examined as an issue in more detail at 5.2.2 below.) The Pro Bono Task Force considered that for legal services to be pro bono work the primary motivation for delivering those services should be a concern for justice, not a concern for commercial, professional or private gain.[42] In its submission to this review, PILCH (NSW), after noting that pro bono legal work can often not be sustained without some compensation for fees and disbursements, stated:

> *What remains of critical importance, however, is that the paramount motivation for taking on legal work pro bono, is fashioned by considerations of facilitating the public interest, redressing public wrongs, asserting rights and improving the quality of justice, as opposed to securing commercial gain (no matter how small).* [43]

Similarly, Freehill Hollingdale & Page argued that:

> *the prospect of fee recovery should be an ancillary and incidental consequence that should not affect the decision whether or not to take the matter on a pro bono basis.*[44]

These views were reflected in several other submissions.[45] An approach commonly adopted is that used by Mallesons Stephen Jaques and reported in a 1994 study:

> *[Pro bono is] free legal work aimed at assisting disadvantaged and needy individuals within the community and organisations which assist such individuals. It does not include free or discounted legal work motivated by considerations of practice development, kinship or friendship.*[46]

However, it is difficult to have a practical definition of pro bono legal services which relies on a subjective assessment of a lawyer's motivation for providing assistance.

An alternative approach would be to allow speculative and contingency fee work to be conducted within a pro bono scheme provided that, if the client is successful, the legal representative is only entitled to recover costs to the extent that a costs order is made in favour of the client and the costs are in fact paid by the losing party. The matter retains its pro bono character as the client is not required to pay for the legal services provided.

On balance, participants in the project felt that work done on a speculative or contingency fee basis should not be regarded as 'true' pro bono work, nor should work performed pursuant to a grant of legal aid. At the same time, many participants considered that speculative and contingency fee arrangements have an important role in facilitating access to the legal system. For this reason, a number of participants were in favour of schemes including in their work the referral of at least some cases on a speculative or contingency fee basis.

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41 Mr R Cornall *Submission* 13.

42 Pro Bono Task Force Report, 2.

43 Public Interest Law Clearing House *Submission* 8.

44 Freehill, Hollingdale & Page *Submission* 5.

45 e.g. NSW Bar Association *Submission* 12; Public Interest Law Clearing House, Inc *Submission* 7.

46 R Evans 'Will the real pro bono please stand up' *Law Institute Journal* (December 1994) 1128.

4.5 The relationship between pro bono legal services and legal aid

Since the 1970s the need to improve access to the legal system has led to a range of complementary legal assistance mechanisms being developed. These were set out in chapter 3. Each mechanism has targeted particular client groups and areas of law so as to minimise overlap and duplication and maximise the availability of legal assistance. The institutional pro bono schemes, for example, will not accept clients unless they have already applied for, and been refused, legal aid.

However, this balancing of services has become increasingly complicated by the failure of legal aid funding to keep pace with the demand for publicly funded legal services. Over the last five years there has been a steady reduction in the range of matters in which legal aid is available.[47] This situation has been exacerbated by recent cuts in federal legal aid funding. A reduction in the availability of legal aid will necessarily increase the demand for pro bono legal services.

The existence of pro bono legal services and other forms of legal assistance does not relieve governments of their obligation to properly fund legal aid services. This point was stressed by the New South Wales Law Society's Pro Bono Task Force.

> *It needs to be borne in mind that whatever contributions the legal profession can make to pro bono work, it can never be a substitute for government funded legal aid. It would be a great mistake for government to believe that the efforts of the legal profession relieve it in any degree at all of its obligation in this regard. Indeed, as government contributes inexorably to the complexity of the law, it has an obligation to increase its expenditure on legal aid quite apart from any socioeconomic pressures.* [48]

Five submissions highlighted the role of pro bono work as being complementary to legal aid, and the fact that the legal profession does not have the capacity to provide pro bono legal services to all of the people who will no longer be assisted by legal aid. Typical of the submissions received were the following:

> *[Pro bono work] is not only different [to legal aid] in the scale and range of work it can accommodate and the results it can achieve, but it relies on the inconsistent availability of private resources.... Legal aid and pro bono work are accordingly hardly interchangeable; if anything they complement each other.*[49]

> *Pro bono services can never meet the difference between those refused or ineligible for legal aid and those in need of legal assistance.*[50]

> *Pro bono services should never be seen as a substitute for a properly funded legal aid program. Pro bono services can work in co-operation with legal aid, and should focus on covering those areas not traditionally covered or not well covered by legal aid.*[51]

Although most schemes will not provide assistance to clients who are eligible for legal aid, the funding cuts to legal aid have seen the number of people ineligible for legal aid grow at an increasing rate.[52]

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47 National Legal Aid *Meeting tomorrow's needs on yesterday's budget: The undercapacity of legal aid in Australia* National Legal Aid Canberra 1996, 2.

48 Pro Bono Task Force Report, 2.

49 Public Interest Law Clearing House, Inc *Submission* 8.

50 Public Interest Law Clearing House, (Vic) Inc *Submission* 7.

51 Intellectual Disability Rights Service, Inc *Submission* 3.

52 NSW Bar Association *Submission* 12.

The relationship between pro bono services and legal aid is, as noted in one submission, 'a heavily political issue'.[53] Another submission to the project expressed concern 'at the increasingly prominent view of Government that the profession will be prepared to meet the gap in provision of legal assistance to the disadvantaged arising from shrinking funding levels to the legal aid community'.[54] The authors of this submission suggested that:

> *...a more pro-active stance needs to be taken by the profession by advising governments that community service that has been taken for granted for many years may not continue in the future, particularly if governments expect to open up competition in traditional monopolistic work practices, such as conveyancing.*[55]

They also pointed out that, in order to take on this role, the peak bodies need to be:

> *armed with competent and accurate statistics to demonstrate the prodigious amount of community service already being performed by the profession.* [56]

In addition to taking on an active lobbying role in relation to legal aid, pro bono services could distinguish themselves from legal aid by giving priority to providing services in areas not covered by legal aid. This approach was suggested in two submissions. For example:

> *Pro bono services can work in cooperation with legal aid, and should focus on covering those areas not traditionally covered or not well covered by legal aid.*[57]

However, this solution may not be acceptable to the pro bono schemes, which see themselves as serving the 'middle ground' of persons who cannot get legal aid because they do not satisfy the stringent means test but who are still unable to afford legal services. That is, the pro bono schemes generally target a type of litigant rather than an area of law.

In its report the Marrero Committee canvassed this issue but concluded that the crisis in the availability of legal services was so great, and the likelihood of increased state funding of legal services so slim, that a comprehensive program of pro bono services needed to be instituted immediately. The Committee was more concerned about the implications of inaction than about the potential for pro bono services to be seen as a substitute for properly funded legal aid.[58] However, it needs to be acknowledged that the situation in Australia is not yet comparable on this point in light of the relatively high level of publicly funded legal aid compared to the United States.

The majority of those who made submissions on the relationship between legal aid and pro bono services considered it essential that pro bono schemes take active steps to ensure that their services are not seen as a substitute for legal aid. The strategies that might be employed to do this are discussed in chapter 6.

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[53] Law Society Pro Bono Scheme *Submission* 10.

[54] National Legal Aid *Submission* 4.

[55] ibid.

[56] ibid.

[57] Intellectual Disability Rights Service, Inc *Submission* 3.

[58] Marrero Report, 30.

4.6 Accessibility: who is eligible for pro bono legal services?

4.6.1 Introduction

Accessibility is the first issue that emerged from the study, and is related to the key theme of modernising traditional pro bono practice. For the purposes of this study, *accessibility* refers to the eligibility criteria that clients should satisfy in order to qualify for pro bono legal services.

4.6.2 Eligibility

In the Discussion Paper prepared and circulated by the Centre, it was proposed that pro bono legal services should be directed at those who have a particular need for legal services which are provided for free or for a substantially reduced fee. This would include:

- people who can demonstrate a need for legal assistance and do not qualify for legal aid, but who cannot afford the full cost of a lawyer's services at the market rate
- non-profit organisations which work on behalf of members of the community who are disadvantaged or marginalised, or which work for the public good
- people or organisations who wish to resolve a legal or factual question, the resolution of which is in the public interest.

This approach was suggested because it has been adopted in a number of Australian and overseas jurisdictions. For example:

- The New South Wales Pro Bono Task Force considered that pro bono work should be provided to:
  - those who occupy the 'middle ground', i.e. who fall outside the legal aid eligibility guidelines but are unable to afford a private lawyer
  - those who require legal services to advance a public, rather than a private interest
  - non-profit organisations which represent the interests of disadvantaged groups or which serve the general public good[59]
- The Marrero Report in New York recommended that pro bono services should be directed at assisting people who were financially unable to pay for legal advice or representation.[60]
- The Law Society of England and Wales' Pro Bono Working Party concluded that pro bono services should be targeted at 'disadvantaged individuals or... organisations who represent the interests of or work on behalf of members of the community who are of limited means'.[61]

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[59] Pro Bono Task Force Report, 2.

[60] Marrero Report, 33.

[61] The Law Society *Solicitors Serving Society: The Report of the Pro Bono Working Party* The Law Society London 1994, 5.

This approach also reflected, in general terms, the eligibility criteria used by the various pro bono schemes,[62] and was supported by many who made submissions to the Centre.[63] One submission noted that there are cases where a person may be asset rich but relatively income poor. It therefore suggested that the target group should include people who would suffer 'extreme financial hardship' if required to pay the full cost of legal services.[64]

But in addition to these criteria, some participants also stressed the public interest element of pro bono work. One firm, for example, only undertakes work on a pro bono basis if there is a public interest element in the matter as well as an inability to afford the requisite legal services. In their view, those cases which simply represent a demand for free or low cost legal services should be given a lower priority than matters in which there is a clear issue of public interest at stake:

> *While the provision of legal services can be, in itself, in the public interest in that it empowers individuals, not every private action is an advancement of the public good.*[65]

PILCH, established specifically to arrange referrals of public interest matters on a pro bono basis, describes a legal matter as being of public interest when:

(i) it affects a significant number of people; or

(ii) raises matters of broad public concern; or

(iii) particularly impacts on disadvantaged or marginalised groups; and

(iv) requires a legal remedy or other legal assistance; and

(v) requires addressing *pro bono publico* ('for the common good').[66]

However, the majority of those who made submissions to the Centre took the broader approach to pro bono work and would not require pro bono matters to have a public interest element. The same approach is taken by the Law Society and Bar Association schemes, which consider an individual's financial position in determining eligibility for assistance but do not require that the matter raise an issue of broad public concern. The Marrero Committee also adopted a definition of pro bono services which focused on the financial position of the person requiring the services rather than on any issue of public interest the case might raise.[67]

4.6.3 Further issues

The terms of reference for this project required the review to address two further questions about access to pro bono services. These were:

- Do all those who require pro bono services use the service?
- If there are some who do not, why not? For example, is it because they are not aware of the service?

There is no data available to the Centre that would indicate the level of demand within the community for pro bono legal services. However, related issues, such as the

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[62] These are discussed in chapter 3.

[63] E.g., Intellectual Disability Rights Service, Inc *Submission* 3; National Legal Aid *Submission* 4; Public Interest Law Clearing House (Vic), Inc *Submission* 7; Public Interest Law Clearing House, Inc *Submission* 8; Law Society Pro Bono Scheme *Submission* 10.

[64] Public Interest Law Clearing House (Vic), Inc *Submission* 7.

[65] Freehill, Hollingdale & Page *Submission* 5.

[66] Public Interest Law Clearing House *Information booklet,* 5.

[67] Marrero Report, 45.

promotion of the pro bono schemes, were canvassed, and these are discussed in section 5.5 and in chapter 6.

4.7 Quality of pro bono legal services

4.7.1 Introduction

Quality is the second issue belonging to the key theme of *modernising traditional pro bono practice.* Participants in the project identified a number of different processes as being important to ensuring *quality:*

- matching cases with lawyers who possess the appropriate skills
- monitoring of cases by the pro bono scheme that makes the referral
- in the case of pro bono schemes, establishing mechanisms for client feedback or complaints
- ensuring parity of treatment within law firms for paying and non-paying work.

Each of these processes is discussed in the following sections.

4.7.2 Matching cases to lawyers with appropriate expertise

Three submissions noted the importance of assigning pro bono cases to solicitors with appropriate expertise. As stated by one of these participants:

> *The only way to ensure quality is to ensure that appropriately experienced people handle the relevant matters.*[68]

The three institutional pro bono schemes adopt this as a key strategy for ensuring quality in the services provided through their scheme. However, each scheme has a different method for maintaining its register of available lawyers. White PILCH updates its register annually, the Law Society Pro Bono Scheme maintains a manual register which was last updated in 1995, and the Bar Association advised that its register has not been formally updated since 1993.

4.7.3 Monitoring referrals

Many participants in the project referred to monitoring as an essential part of ensuring quality in pro bono services where cases are referred through formal schemes. For example, these two participants wrote:

> *The [Bar Association Legal Assistance] Scheme through its Manager monitors the progress of the matter by communicating with the client and/or encouraging the client to make contact if there are any concerns.*[69]

> *The firm's Pro Bono Committee has a responsibility for monitoring on a regular basis every matter that has been accepted on a pro bono basis to ensure that the principle of equal treatment has been adhered to.*[70]

Each of the pro bono schemes takes a different approach to the monitoring of referrals. PILCH described its procedures as follows:

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[68] Mr P Jeffares *Submission* 2.

[69] NSW Bar Association *Submission* 12.

[70] Freehill, Hollingdale & Page *Submission* 5.

> *PILCH monitors all matters referred until completion by means of telephone and written requests to clients and participating members for their views on the referral and for their views on conduct, progress and outcome of the matter. All files are kept open* for *regular monitoring until completion of the matter.*[71]

PILCH (Vic) has a similar policy to its New South Wales counterpart. It monitors files every three months and contacts the lawyer for an update on the matter. The NSW Bar Association Legal Assistance Scheme advised that its Manager liaises with the client and counsel during the matter. The Law Society Pro Bono Scheme has no formal monitoring procedure in place.

Monitoring can also be important where a law firm establishes its own pro bono program. One law firm described the steps that it takes to monitor pro bono cases as follows:

> *The firm's Pro Bono Committee has a responsibility for monitoring on a regular basis every matter that has been accepted on a pro bono basis to ensure that the principle of equal treatment [between pro bono cases and paying matters] has been adhered to. In this respect, the Pro Bono Committee meets monthly and requires reports (which it audits) in relation to each pro bono matter at least on a quarterly basis.*[72]

Related to the question of monitoring are the standards against which service should be monitored. As noted in the submission above, one requirement is that pro bono matters receive the same standard of service as paying matters. PILCH (Vic), however, raised the problem of pro bono clients sometimes having unrealistic expectations for their matter. Clients may refuse to accept a reasonable offer to settle because there is no incentive on a costs basis to do so. PILCH (Vic) suggested that cases should be monitored for continuing merit.

PILCH (NSW) attempts to address the problem of unrealistic expectations by arranging and attending an introductory meeting between the client and the lawyer at which the factual issues are clarified and the extent of assistance is established. A letter confirming the outcome of the meeting is then sent by PILCH to the client. A system such as this allows a matter to be monitored against a set of agreed benchmarks.

One submission to the project advocated the establishment of protocols of conduct to ensure that both clients and participating lawyers understand what to expect from a pro bono scheme.

> *Any formal pro bono scheme should have a protocol of conduct attached to it and participants could be expected to sign such a protocol (in addition to the normal Guide to Professional Ethics applying to all members of the profession). The Centre may wish to consider making such a protocol available to every pro bono client by the solicitor. It could cover such articles as what is expected of the client (e.g. to keep the solicitor advised of personal details, provide clear instructions etc) and what the client may expect from the solicitor.*[73]

The research findings show that monitoring is considered to be an important part of ensuring that high quality legal services are provided to pro bono clients. This view is supported by the American Bar Association. In its 'Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means', it includes the following:

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[71] PILCH (NSW) Response to questionnaire *Future directions in pro bono legal services in New South Wales.*

[72] Freehill, Hollingdale & Page *Submission* 5.

[73] National Legal Aid *Submission* 4.

Standard 3.4-7 Client Satisfaction

A pro bono program should obtain information from clients regarding their satisfaction with the program and its volunteers.[74]

However, participants also noted the importance of clients understanding the basis on which the services are being provided and the factors against which the progress of the case will be monitored.

4.7.4 Client feedback and complaints procedures

Another mechanism noted by participants as a means of ensuring quality in pro bono services was the establishment of client feedback and complaints procedures. Two written submissions to the project mentioned the importance of obtaining feedback from clients. Based on their own experience, PILCH (NSW) recommended securing feedback letters from clients, and, where appropriate, the pro bono law firm responsible for the matter, at the conclusion of the case. The Bar Association Scheme has a less formal system for obtaining feedback, but encourages the client to make contact if they have any concerns about the progress of the matter. A representative of a community legal centre who was interviewed in the course of the project advised that the centre encourages clients to provide feedback where matters are referred out on a pro bono basis, particularly where the service provided was unsatisfactory from the client's point of view.

A number of other participants raised the issue of formal complaints procedures. One submission suggested that pro bono schemes should establish protocols for the conduct of matters, and that breaches of these protocols should be dealt with by a complaints mechanism within the scheme. [75] Another participant saw a complaints system as an alternative to continual monitoring of cases. They suggested that while continual monitoring is not necessary in all cases, the scheme should recognise and act on repeat complaints.

A different view was expressed by another participant:

> *While I agree that practitioners should be required to provide services to an acceptable standard, those are matters which should be covered in the normal course by the profession's regulatory regime.* [76]

This recognises the fact that, although there are currently no practice rules or guidelines in place that deal specifically with the issue of quality in pro bono legal services, as a matter of professional conduct lawyers have the same obligation towards pro bono clients as paying clients. Pro bono clients are also protected by regulatory controls. This means that a client whose case is being handled on a no fee basis has the same right to make a complaint to the Legal Services Commissioner as does a full fee paying client.

The American Bar Association addressed this issue in developing standards for civil pro bono programs. The standards include:

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[74] American Bar Association Standing Committee on Lawyers 'Public Service Responsibility *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means* American Bar Association Chicago 1996.

[75] National Legal Aid *Submission* 4.

[76] Mr R Cornall *Submission* 13.

Standard 3.4-6 Grievance Procedure

A pro bono program should establish a policy and procedure to address complaints regarding the denial, quality and manner of service.[77]

The pro bono schemes operating in New South Wales do not have formal complaints systems in place. PILCH (NSW) advised that, on the rare occasions when member firms have not provided assistance in accordance with the scheme's guidelines, the matter has been taken up with the PILCH Board to determine appropriate action. Other than this, the schemes would seem to deal with complaints on an ad hoc basis.

4.7.5 Ensuring parity of treatment for pro bono cases within law firms

All participants who commented on the issue stressed the importance of pro bono clients receiving the same quality of service from lawyers as paying clients. For example:

> *It is crucial to the integrity of the provision of legal services on a pro bono basis that there be no distinction whatever between the level and quality of the service provided on a pro bono basis and that provided to a client who is able to pay the usual fees.*[78]

> *The function of every barrister is to bring to the task at hand his or her full extent of professional skills and learning irrespective of considerations of its fee-earning potential.*[79]

The importance of this principle was also stressed by the Pro Bono Task Force, which noted that, central to any commitment to provide pro bono legal services is 'a commitment to ensuring that the quality of service provided for pro bono work is equal to the work provided to paying clients'.[80]

A number of different ways to ensure parity of service were suggested by participants. One way is to incorporate the commitment to parity of service into written guidelines:

> *FHP's guidelines insist that any matter undertaken on a pro bono basis is to be accorded the same quality of service and treatment as any other matter undertaken by the firm.*[81]

> *To ensure high quality of service, a pro bono policy should be adopted by a law firm and given the imprimatur of the partners.*[82]

Another submission noted that quality of service can be affected by the status of pro bono work within a firm's 'culture'. This submission suggested that partners should set the example in performing pro bono work.[83] This view was supported by the Committee on Legal Assistance of the Bar of the City of New York. In a 1988 report, it drew attention to the fact that 'a firm's attitude to *pro bono* work "flows from the top down" and that a lack of partner enthusiasm is easily perceived and undermines even the best organized *pro bono* program'.[84] It recommended that 'strong backing at the

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77 American Bar Association standing Committee on Lawyers' Public Service Responsibility *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means* ABA Chicago 1996.

78 Freehill, Hollingdale & Page *Submission* 5.

79 NSW Bar Association *Submission* 12.

80 The Pro Bono Task Force *The Legal Profession - Commitment to Pro Bono Work, A Report to the Council of the Law Society of New South Wales* 18 March 1992, 2.

81 Freehill, Hollingdale & Page *Submission* 5.

82 Public Interest Law Clearing House *Submission* 7.

83 ibid.

84 The Committee on Legal Assistance 'Improving the Delivery of Pro Bono Legal Services' *The Record of the Association of the Bar of the City of New York* Vol 43 No 3 April 1988, 269.

highest levels of the firm is extremely important if not essential for a successful *pro bono* effort'.[85]

Two solicitors interviewed in the course of the research reported that, within their firms, pro bono files are recorded in the same way as files opened in paying matters. Work performed on those files is also evaluated in the same way. Integrating pro bono work into a firm's regular business has been recognised by others as a means of ensuring that legal services provided in pro bono cases are of the same quality as services provided to paying clients. New York Lawyers for the Public Interest recommended that '...in evaluating work, ...there be no distinction made between pro bono work and billable work'.[86] The Marrero Committee reached the same conclusion, recommending that law firms support pro bono efforts by crediting as 'billable hours' the time spent on pro bono services.[87] By integrating pro bono work in this way the full resources of a firm will be available to the matter, including the experience of other, more senior lawyers within the firm, and larger and more complex pro bono cases can be taken on by the firm.

The research findings therefore indicate three measures that can be put in place to ensure parity of treatment within law firms for pro bono and paying matters. The first of these is for the firm to incorporate a commitment to equality of treatment in written guidelines. The second is to develop a culture within the firm of support for pro bono work; development of such a culture is generally seen as relying on senior partners and their support for pro bono work. The third measure is to integrate pro bono work into a firm's regular business by recording and evaluating pro bono work in the same manner as paying work.

4.7.6 Further issues

The Terms of Reference for the study raised two issues concerning quality of pro bono legal services. These were:

- are pro bono services of reasonable quality?
- to the extent they are not, what is the problem? Do lawyers not give the matters enough time and skill? Do the circumstances of clients make provision of adequate service difficult?

There is no data available to the Centre to enable it to assess the quality of the pro bono legal services currently being provided. The research findings do, however, suggest procedures that can be put in place to assist pro bono schemes and lawyers to maintain quality in service provision. These are discussed in detail in chapter 6.

4.8 Conclusion

This chapter addressed the first key theme that emerged from the research findings. This theme was identified as *modernising traditional pro bono practice.* Two issues were found to be closely connected to this major theme: *accessibility* and *quality* of pro bono legal services.

The following chapter will examine the second key theme, *resourcing* of pro bono legal services. Four related issues will also be considered: *human resources, financial resources, infrastructure* and *availability of pro bono services.*

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[85] ibid.

[86] New York Lawyers for the Public Interest Inc *Developing and Maintaining Quality Pro Bono Programs: A Roundtable Discussion of NYLPI Participating Firms* New York 1988, 6.

[87] Marrero Report, 120.

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Resourcing pro bono legal services

5.1 Introduction

The second key theme that emerged from the study was *resourcing pro bono legal services.* This refers to how pro bono services are provided and supported. Within this theme, four issues were considered as important by participants:

- *human resources* - the services provided by lawyers in undertaking pro bono work, either directly or after referral from a scheme
- *financial resources* - the means of funding the provision of services by individual lawyers and by the schemes
- *infrastructure* - assistance to lawyers who provide pro bono services, such as equipment, training and support networks
- *availability* of pro bono services to members of the public.

These issues are discussed in this chapter.

5.2 Human resources

5.2.1 Introduction

As noted in chapter 3, there is at present no means of measuring how much pro bono work is undertaken by all legal practitioners in New South Wales. A survey of solicitors carried out by the Law Society in conjunction with the 1997 practising certificate renewal provided an estimate that 45.5% of Law Society members (around 6,300) were conducting pro bono matters in March 1997. These matters each involved an average of 10 hours work that month.[88]

Human resources was generally discussed by research participants in the context of the need to increase lawyer support for pro bono work. One factor behind this need is the possibility that recent changes in the structure of legal practice may have a negative impact on the willingness of members of the profession to undertake pro bono work.

In recent years, the legal profession has been exposed to greater competition both from within its own ranks and from non-lawyers, such as licensed conveyancers and accountants. The application of competition principles to the legal profession has been

[88] Keys Young *Practising Certificate Survey 1997-98 Final Report* (Prepared for the Law Society of New South Wales) September 1997, 33.

supported by the Independent Committee of Inquiry on National Competition Policy (the Hilmer Inquiry), the Trade Practices Commission and the Access to Justice Advisory Committee and is likely to continue to have an increasing impact on the practice of law. One possible consequence of these changes is that greater competition will result in smaller profit margins and will therefore reduce the capacity of lawyers to take on non-paying work. Another possible outcome is a change in lawyers' attitudes towards their profession. Several participants commented on this. For example:

> *Government must accept that by forcing professions to open up their work practices to competition from other professions and trades, the concomitant ideal of service back to the community and protection of the powerless will diminish, if not disappear.*[89]

A second reason to consider strategies for increasing the number of lawyers who will undertake pro bono work is the voluntary nature of the work. As noted by one participant, pro bono services rely on 'an inconsistent availability of private resources'.[90] One way to reduce the problems created by this inconsistency is to increase the number of lawyers available to carry out pro bono work.

A third reason is the increase in demand for services which is expected to result from the cutback in government funding of legal aid.

> *The need to develop and draw upon an increased capacity for pro bono work in the legal profession can only be expected to increase, as government financial support for legal assistance tightens.*[91]

The nature of the pro bono/legal aid relationship is discussed in section 4.5 above.

Various measures to encourage lawyers to undertake pro bono work were discussed by participants in the research, and were suggested in other studies reviewed in the course of this project. These strategies are highlighted in the following sections. However, before examining ways to increase lawyer participation in pro bono services, this section will explore the reasons why lawyers become involved in pro bono work.

5.2.2 Reasons for providing pro bono legal services

A professional obligation

The provision of pro bono legal services is generally regarded as one of a lawyer's professional obligations. Historically, legal assistance to the poor and disadvantaged was founded in the Christian duty to protect the poor and was primarily a matter for the church. This was done in two ways:

> *First, the Church in effect granted widows, orphans, and poor persons the benefit of clergy by extending ecclesiastical jurisdiction over them. Second, the Church expected canon lawyers (virtually all of whom at this time were clerics) to furnish their services free of charge to at least some litigants who could not afford to pay them.*[92]

In the thirteenth century this responsibility began to be shifted to lawyers, through municipal statutes and through the practice of justices assigning lawyers to represent poor clients for no fee.[93]

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89 National Legal Aid *Submission* 4.

90 Public Interest Law Clearing House, Inc *Submission* 8.

91 D T Gilbert 'The Future of Pro Bono Legal Services and the Role of PILCH' *Submission to the Law Foundation of NSW* May 1997, 4.

92 J A Brundage 'Legal Aid for the Poor and the Professionalisation of Law in the Middle Ages' (1988) 9 *Journal of Legal History* 169,174-5 quoted in D Robertson 'Poor laws - a history' *Alternative Law Journal* Vol 19 No 1 February 1994 21, 22.

93 D Robertson 'Poor laws - a history' *Alternative Law Journal* Vol 19 No 1 February 1994 21, 21-22.

The obligation to provide pro bono assistance is now seen as a consequence of the special position of lawyers within the community. The Marrero Report (1990), which looked at the extent of the unmet need for civil legal services among the poor in New York, described this special position in the following terms:

> *The lawyer's role in our society has little parallel with that of members of any other profession or trade. Much of the law and what lawyers do is about* providing justice, *a principle that few lawyers would hesitate placing nearer to the heart of our way of life and guarding more closely than services provided by other professionals. The legal profession serves as indispensable guardians of our lives, liberties and governing principles. Lawyers have a special obligation to insure a legal system that protects the rights of individuals, and their political, civil and religious freedoms. And it is lawyers whose business it is to ascertain that the political means of government are constrained by the higher bounds of the rule of law. Like no other professionals, lawyers are charged with the responsibility for systematic improvement of not only their own profession, but of the law and society itself.*[94]

A similar view was adopted by the Pro Bono Task Force. It considered that the fundamental basis for any obligation to undertake pro bono work flows from the professional nature of legal practice.

> *Since the well being of society and its institutions depends on the rule of law and the protection of individual and community rights and freedom, lawyers as persons who possess unique knowledge and skills in this context have a responsibility towards any segment of society which is denied the protection of the law and access to legal remedies.*[95]

The Task Force considered that this responsibility has increased in light of:

- the wide range of activities now governed by laws and regulations and the complexity of those laws
- the growing complexity and cost of access to legal remedies
- the importance of 'equality before the law' in an environment where an increasing number of people are unable to afford the cost of legal representation
- the reductions in publicly funded legal services.[96]

Other reasons

A sense of professional obligation is not the only reason that some practitioners perform pro bono work. The Pro Bono Task Force identified a number of 'professional advantages' which are by-products of engaging in pro bono work.

These [advantages] include:

- professional development - the opportunity to practise in matters of an esoteric nature
- client contact - with individuals or bodies beyond the norm
- greater knowledge and understanding of community affairs
- attraction of staff - to firms demonstrating a social conscience

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[94] Marrero Report, 26

[95] Pro Bono Task Force Report, 5.

[96] ibid.

- the satisfaction of helping those who need it
- the opportunity to 'put something back into the community'
- participation in the process of law reform.[97]

The Task Force also noted the importance of pro bono work in promoting the image of lawyers. A similar range of advantages has been identified in other studies.[98]

Some studies have found that much of the work performed for no or reduced fees is done for business reasons rather than out of sympathy for the client or because of any ethical obligation. For example, a study of lawyers in Buffalo found that 'the primary reasons for taking on [no-fee and low-fee cases] developed out of the need to get and keep paying clients'.[99] The use of free services as loss leaders to entice paying customers to a practice also occurs in Australia. Two of the respondents to a survey of Victorian lawyers in 1977 gave the following reasons for their no-fee and low-fee work:

> *I used to do this to build up the practice and goodwill. Now overheads have risen and I don't do it at all.*
>
> *If I do a lot of work for a client, and later he rings me up and gets a bit of advice, I don't charge for it I mean, most of the time I wouldn't worry about it. I think this forms part of your goodwill and I think this happens to build your business up.*[100]

The use of free services as a marketing tool was also acknowledged by some members of the Project Advisory Panel.

5.2.3 Reasons for <u>not</u> providing pro bono legal services

In the absence of a comprehensive survey of the profession it is not possible to accurately identify why some lawyers do not provide pro bono legal services. Studies in the United States suggest that lawyers may not perform pro bono work because, among other things:

1. They do not understand, or accept, the obligation to undertake such work.
2. They are apathetic, and do not consider their contribution would make any difference to the poor and disadvantaged.
3. Their legal education has not encouraged them to see pro bono work as part of their professional life.
4. There is a lack of support by influential partners in the firm.
5. Pro bono work is not sufficiently recognised within the profession or the broader community.
6. They do not come into contact with those who need assistance.
7. The financial strain of the current economic times mean they cannot afford to do any kind of pro bono work.[101]

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97 Pro Bono Task Force Report, 6.

98 See, e.g. Z Macaluso 'That's OK, This one's on me: A discussion of the responsibilities and duties owed by the profession to do *pro bono publico* work' (1992) 26 *University of British Columbia Law Review 65,* 69-70.

99 P Lochner 'The No-fee and Low-fee Legal Practice of Private Attorneys' (1975) 9 *Law and Society Review* 431,444, quoted in Dr J FitzGerald *Poverty and the Legal Profession in Victoria* AGPS Canberra 1977, 40-1.

100 Quoted in Dr J FitzGerald *Poverty and the Legal Profession in Victoria* AGPS Canberra 1977, 41.

101 See, e.g. Z Macaluso 'That's OK, This one's on me: A discussion of the responsibilities and duties owed by the profession to do *pro bono publico* work' (1992) 26 *University of British Columbia LawReview 65,* 70-4; The Committee of Legal Assistance 'Improving the delivery of pro bono legal services' (1988) 43 *The Record of the Association of the Bar of the City of New York* 257.

These factors are generally relevant in New South Wales. The first five of these factors relate to the existence and strength of a pro bono culture and are examined later in this chapter. Strategies for increasing the capacity of lawyers to provide these services in difficult economic times are also discussed under *infrastructure* in section 5.4.

5.2.4 The Maryland study - what factors influence a lawyer's level of participation in pro bono work?

A study in Maryland in the United States (1992), which involved surveying or interviewing over 2,000 lawyers, argued that there are four factors which influence a lawyer's level of participation in pro bono services.[102] Understanding these four factors may assist pro bono programs to increase lawyer participation.

Factor 1: the level of motivation to do public service work which each lawyer brings to the practice of law

The study found that lawyers' attitudes to pro bono work ranged from those who are resistant or hostile to the notion of performing pro bono work, to those who are neutral or indifferent to pro bono and those who are positive and take part in pro bono programs. Accordingly, recruitment efforts need to be varied to appeal to different levels of motivation.

It is unlikely that those who are resistant or hostile to performing pro bono work could be persuaded to do so. On the other hand, quite passive measures, such as the advertising of pro bono opportunities in a professional newsletter, would be sufficient to encourage those who already have a positive attitude. The study recommended that efforts to expand the number of lawyers involved in pro bono programs need to concentrate on those who hold a neutral attitude, as this group of lawyers is the largest in number and likely to provide pro bono services if requested.

The study concluded that the most effective way to motivate those who are neutral is to have pro bono programs or other lawyers make a personal one-to-one appeal to them. Further, these lawyers are most likely to accept pro bono cases which fit easily into their practice, strongly preferring cases which are routine, within their area of law and which are predictable in terms of time demands. A pro bono program which recruits 'neutral' lawyers needs to be sensitive to this and to refer appropriate cases to these lawyers.

While not directly related to the issue of recruitment, the study also found that lawyers who expressed neutral opinions about undertaking pro bono work are likely to be impatient with pro bono programs that are not well-run or that do not effectively refer cases. Therefore, pro bono programs need to have an efficient referral system in place before recruiting neutral lawyers. This factor was also recognised by two informants interviewed for this project. In their view, once a lawyer volunteers their services to a pro bono program, it is important to involve them in pro bono work straight away. Volunteer lawyers who are put 'on hold' are likely to lose interest in the program.

In New South Wales, the success of personal appeals in recruiting lawyers has been observed by some programs. For example, member firms of PILCH (NSW) are asked to host lunches or seminars for colleagues as a means of encouraging them to join the clearing house. At a less formal level the representative of one community legal centre interviewed for the project advised that volunteer lawyers often offer their services after talking to a colleague who is already working at the centre. The Maryland study suggested that a letter from a senior member of the profession or from a judge could

[102] People's Pro Bono Action Centre Inc *Furthering the Pro Bono Commitment in Maryland: An Assessment of the State's Volunteer Legal Services Delivery System* Baltimore 1992, 24.

also motivate lawyers who held a neutral attitude towards pro bono work to take part in pro bono programs.

Factor 2: the type of firm in which the lawyer practises

The second factor identified by the Maryland study that influenced a lawyer's participation in pro bono work is the structure of the firm in which the lawyer practises. Solo practitioners and lawyers in small firms were found to carry out more direct pro bono work than their colleagues in large firms. The authors of the study suggested that this may be attributable to the fact that particularly in rural areas, doing pro bono work is accepted as a natural part of practice because the goodwill it generates may lead to paying business. However, this greater commitment to direct pro bono may serve as an impediment to participation in organised pro bono schemes.

In larger law firms, the study found that 'a lawyer's interest and ability to do pro bono work is profoundly influenced by the firm's culture. Regardless of their level of motivation, lawyers take signals from the firm regarding the extent and nature of pro bono involvement'.[103] Therefore, when a firm does not adopt a policy which encourages pro bono work, it is less likely to be taken on by the firm's lawyers.

This was also noted as important by a participant in this project, who favoured promoting pro bono work as an integral part of a firm's practice:

> *To ensure high quality of service, a pro bono policy should be adopted by a law firm and given the imprimatur of the partners. Partners should also set the example in performing pro bono work. In Victoria, the Victorian Bar continually sets the example by senior barristers and QCs taking up pro bono work.*[104]

Other studies confirm the importance of the attitudes of partners in a firm in motivating solicitors to undertake pro bono work. As one report described it, the factors pressuring employed solicitors and associates not to do pro bono work include:

> *the absence of vocal support from firm partners, occasional negative signals to associates (intentional or unintentional), and the great time pressures placed on attorneys.* [105]

Equally, positive partner leadership on the issue of pro bono services can be a critical factor in encouraging employed solicitors and associates to become involved in pro bono work.

Factor 3: the lawyer's area of substantive concentration

In the Maryland study, 93% of the lawyers who were already participating in pro bono programs stated a preference for cases in an area of law with which they were familiar. Similarly, for lawyers who had not taken any pro bono cases, the factor cited as being the most likely to influence them to take a case is familiarity with the area of law.[106] The research confirmed that, for many lawyers, training could not overcome an unacceptable level of uncertainty about how to proceed in a case.

The Maryland study supports the approach taken by the New South Wales pro bono schemes in structuring their referrals around the participating lawyers' areas of expertise. The study also suggests that, for lawyers who work outside the areas in which pro bono services are required but who are willing to participate in pro bono

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[103] id. 33

[104] Public Interest Law Clearing House (Vic), Inc *Submission 7.*

[105] The Committee on Legal Assistance 'Improving the Delivery of Pro Bono Legal Services' *The Record of the Association of the Bar of the City of New York* (Vol 43, No 3, April 1988) 257, 258.

[106] People's Pro Bono Action Centre Inc *Furthering the Pro Bono Commitment in Maryland: An Assessment of the State's Volunteer Legal Services Delivery System* Baltimore 1992, 36.

programs, different forms of participation may need to be offered. These include direct representation of clients, interviewing of clients for intake, assistance to unrepresented litigants and advice only clinics, mentoring and training of other lawyers and recruitment of lawyers.

Factor 4: geographic location, particularly whether the lawyer practises in an urban or rural setting.

The Maryland study found that a significant factor which impacts on how lawyers participate in pro bono programs is where they practise. Particular differences were noted between lawyers practising in rural and urban locations.[107] Many of these differences were a function of firm size and type of practice. Firms in rural locations are more likely to be small and to practise in areas where there is a demand for pro bono services. Rural firms are therefore likely to conduct a significant amount of direct pro bono work. This generally accords with the results of the Law Society's 1997 practising certificate survey, which showed a high level of involvement of rural practitioners in pro bono work.[108]

In relation to rural firms, the Maryland study found that participation by rural practitioners is affected by the culture of the community in which they practise. In communities where a tradition of voluntarism is well established lawyers will be more likely to participate in pro bono work.

5.2.5 Recognition

Acknowledgement of the pro bono work done by lawyers is generally viewed as an important way to foster and maintain their participation in pro bono schemes and direct pro bono work. As one submission to the project noted:

> *If the legal profession is to be encouraged to act with generosity towards the community, as it should, then recognition of that generosity, rather than ignoring it and promoting only negative aspects of the profession, will assist the profession not only to continue but to expand that generosity.*[109]

The annual Pro Bono Awards are aimed at providing this sort of recognition for solicitors. Four awards are made:

- the People's Choice Award, for an outstanding contribution to pro bono work by an individual solicitor or firm
- the Community Legal Centres' Award, for volunteer work done at community legal centres
- the PILCH Award, to acknowledge an outstanding contribution by a member firm
- NSW Bar Association President's Legal Assistance Award.

Other types of recognition are also accorded to pro bono work. The journals and newsletters of the professional associations and the schemes often publicise particular examples of pro bono work.[110] One large firm has recognised the efforts of its solicitors who volunteer their services at a community legal centre by holding a dinner for them. During Law Week 1997, a special function was held at the Downing Centre Local

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[107] id. 37

[108] Keys Young *Practising Certificate Survey 1997-98 Final Report* (Prepared for the Law Society of New South Wales), 32.

[109] Freehill, Hollingdale & Page *Submission* 5.

[110] See, e.g., 'Pro bono prestige is what Will Week's all about' *Law Society Journal* June 1994,84; 'Loving the neighbourhood' *Law Society Journal* October 1993, 67; 4; 'So what type of Pro Bono does the Bar do?' *STOP PRESS* October 1995, 5.

Court to acknowledge the pro bono services provided by solicitors and barristers who staff duty rosters at the Court.

While public recognition of pro bono efforts is important, the Maryland study suggests that lawyers do not value all types of recognition equally. Therefore, schemes need to develop a range of ways to recognise the efforts of volunteer lawyers. A sizeable majority of the lawyers surveyed for the Maryland study indicated that the source of appreciation that mattered most to them was clients. The study therefore recommended that pro bono schemes explain to clients the value of thanking the lawyer who takes their case. The study suggested that this could be done in the referral letter that is sent to the client or as part of an information pamphlet provided to pro bono clients. The study also recommended that pro bono programs send written thank you letters to lawyers at the end of matters.

5.2.6 Developing a pro bono culture

The promotion of a pro bono culture amongst lawyers is one way to increase the level of participation in pro bono services. PILCH (NSW) see it as an important part of their work that they 'promote a pro bono culture throughout the legal profession'.[111] In the context of a discussion about encouraging lawyers to undertake pro bono work, another submission stated:

> *...it is an appropriate element of a lawyer's calling to assist in a pro bono basis in appropriate circumstances and...it is desirable for such culture to be fostered and promoted within the legal profession.*[112]

Several different ways were suggested for encouraging and promoting such a culture. Two participants interviewed for the project noted the value of education and training in developing a pro bono culture. One of these participants emphasised the importance of introducing the subject of pro bono work at an early point in the law school curriculum. They observed that student culture changes the goodwill of students over time, and that law students are more likely to be enthusiastic about voluntary work at an early stage of their course. This observation is supported by empirical research conducted in the United States. For example, a study of law students at the University of Denver, published in 1982, found that students' preferences for a public interest law job clearly declined during their years in law school.[113] However, the survey of Law Deans carried out for this project suggests that few Law Schools currently include discussion of pro bono practice within their curriculum.

The role models provided by members of the legal profession can also be a factor in promoting a pro bono culture. The importance of partner leadership within law firms on the issue of pro bono work has already been noted.[114] One participant in the study also drew attention to the potential influence of role models on law students:

> *Similarly, the role models that law academics and other prominent members of the profession portray is an issue. It is not only what students might be taught at university that is relevant but also what they observe of the practice of academics and the profession.*[115]

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[111] PILCH (NSW) Response to questionnaire *Future directions in pro bono legal services in New South Wales.*

[112] Freehill, Hollingdale & Page *Submission* 5.

[113] RV Stover 'Law school and professional responsibility: the impact of legal education on public interest practice' *Judicature* (Vol 66 No 5 November 1982) 194.

[114] See section 6.2.4.

[115] Latrobe University Response to the *Survey of Law Deans.*

Another participant interviewed for the project felt that the diversity of pro bono schemes operating in the community could promote a pro bono culture by offering lawyers a variety of ways to participate in pro bono work.

Greater coordination and cooperation within the legal profession was also identified as important in promoting a pro bono culture:

> *The provision of legal services on a pro bono basis is not an area appropriate for a competitive approach within the profession. Rather, it is only by effective communication coordination, cooperation, and the sharing of information, ideas, and resources that the real need for pro bono services can properly be identified and met.*
>
> *Such promotion, encouragement and cooperation has to occur at all levels: at the institutional level of the Law Societies and Bar Associations and the Law Council; at the level of firms and barristers' floors; at the level of the Public Interest Law Clearing House and similar ventures; at the individual lawyer level; and at the educational level within the universities and the colleges of law.*[116]

These responses suggest that the development of a pro bono culture can only occur through a widespread effort across all areas of the legal profession. These efforts need to involve universities as well as the practising profession, and need to be coordinated if they are to be successful.

5.2.7 Should pro bono be mandatory?

In the United States there have been calls for pro bono service to become mandatory as a means of increasing the amount of pro bono work undertaken by the legal profession. Under such a system, lawyers would be required to work a certain number of pro bono hours in order to continue their registration. The Marrero Committee endorsed such an approach for a number of reasons, including the following:[117]

- Pro bono work is a professional duty (an 'unavoidable obligation') and not a matter of individual charity.
- Volunteer services can not significantly close the gap between legal services available to the poor and the critical need for those services. The Committee found that, despite substantial efforts by many bar associations to encourage pro bono work, most had no more than 10 to 15 per cent of their members prepared to work on a voluntary basis.
- Volunteer services suffer from a basis flaw: participation is essentially uneven and sometimes unreliable.
- It is difficult to sustain the extraordinary levels of effort and resources needed to appreciably boost, and maintain, the level of voluntary legal services.
- It is inequitable for the vast majority of attorneys to avoid fulfilling their professional duties at the expense of the minority of attorneys who do contribute services on a pro bono basis.
- There is no evidence to suggest that mandatory pro bono work would be performed in a half-hearted, shoddy or ineffective manner when compared to voluntary work.

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[116] Freehill, Hollingdale & Page *Submission* 5.

[117] These reasons are set out in the Marrero Report, 96-113.

- The argument that obligatory pro bono work would remove the pressure on government to provide public funding for legal services ignores reality (in that the government has not increased funding even when the amount of pro bono work is well below the demand for such services) and, if taken to its logical conclusion, is an argument against any pro bono work at all.

Notwithstanding the support for mandatory pro bono by the Marrero Committee and others, attempts to introduce such schemes seem to have had little success. For example, in late 1994 a petition by the Nevada State Bar to the State Supreme Court asking it to make 20 hours of pro bono work an annual requirement for practice had to be withdrawn in the face of opposition from the profession. Similarly, a requirement by the Florida Supreme Court that lawyers report to the Florida Bar each year on whether they have performed 20 hours of pro bono work or paid $350 in-lieu divided the profession and led to the Florida Bar asking the Court to rescind the reporting requirement.[118]

The research conducted for this project found little support for mandatory pro bono legal services in New South Wales. The Pro Bono Task Force looked at whether pro bono work should be mandatory or subject to pressure on practitioners to provide it and concluded that such an approach was inappropriate and probably unnecessary.[119] In its report, the Task Force stated that it 'must be emphasised from the outset that pro bono work is a matter of conscience and capacity'.[120]

The Project Advisory Panel and a number of submissions, considered it preferable that the profession's commitment to pro bono legal services be increased through the use of incentives rather than by making it mandatory.[121] One participant opposed mandatory pro bono work on a number of grounds. These included:

1. It is entirely contrary to the necessary culture required to undertake legal work on a pro bono basis to tell a lawyer to undertake work on such a basis.

2. Compulsion will simply breed resentment and result in a discrimination in the level and quality of the service provided when compared to that provided to fee paying clients, thereby undermining the principle of equal treatment.

3. The imposition of mandatory pro bono legal work would affect the ability of the legal profession to compete in a market environment where, under Australia's new competition policies, persons who are not members of the legal profession are increasingly permitted to perform legal services in competition with the profession. Presumably an obligation to undertake pro bono work would not be imposed on such persons.

4. It would single out the legal profession in a manner not applied to other sectors of the community who provide goods and services needed by those who are generally unable to pay for them.[122]

In addition to these concerns, mandatory pro bono work may unfairly impact on small firms which usually have less capacity to do work for no fee. There will also be lawyers who cannot easily satisfy the requirement because they practice in areas of law (such as admiralty or trade marks) which have little relevance to the needs of those who

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[118] GM Kraw 'Obligatory Pro Bono Solves Nothing' *National Law Journal* (September 1996) A-20.

[119] Noted in Mr P King *Submission* 6.

[120] Pro Bono Task Force Report, 1.

[121] e.g., Mr P Jeffares *Submission* 2; Intellectual Disability Rights Service, Inc *Submission 3;* Freehill, Hollingdale *&* Page *Submission* 5; Mr P King *Submission* 6.

[122] Freehill, Hollingdale & Page *Submission* 5.

cannot afford legal services. Finally, there are the practical problems of who should coordinate the pro bono services to make sure they are provided to those most in need, and who should have responsibility for ensuring that lawyers have satisfied their pro bono obligations each year. The coordination and, to a lesser extent, monitoring of mandatory pro bono work would probably require more resources than are currently available in New South Wales.

On balance, the absence of support for mandatory pro bono legal services, and the practical problems of coordinating and monitoring such services, suggests that it is not a realistic option in New South Wales at present.

5.3 Financial resources

5.3.1 Assistance with disbursements

Disbursements are expenses associated with a legal matter. They can include travelling expenses, interpreter fees, and the cost of engaging an expert witness or private investigator. In many cases these expenses can be substantial. The availability of assistance to meet the costs of disbursements is an important factor for many lawyers when considering whether to perform work on a pro bono basis. Several participants commented on this. For example:

> *The greatest encouragement for practitioners to continue and increase their pro bono services is if they can be confident that disbursements are covered.*[123]

> *A disbursement fund, or an experts panel to do pro bono work from other disciplines is essential to encourage pro bono services by lawyers in particular cases.*[124]

A number of other submissions also supported this view.[125]

At present, lawyers who conduct pro bono work may be entitled to access a disbursements assistance fund established by the Law Foundation of New South Wales and administered by the Law Society. Lawyers may apply to the fund for reimbursement of expenses incurred by them on behalf of their clients. At the time that interviews were conducted for this project, some concerns about the operation of the Fund were raised by participants. These concerns related to the processing of payments by the Fund. Since that time, action has been taken by the Fund and these problems have been resolved. It remains the case, however, that the Fund operates from a limited capital base and is not in a position to provide assistance to all pro bono matters handled in New South Wales.

Some assistance with disbursements has been available since 1993 through the operation of the Local, District and Supreme Court Rules. The Rules provide for the waiver of initiating filing fees in pro bono matters that are being conducted through the Law Society Pro Bono Scheme or the Bar Association Legal Assistance Scheme. While this provision is of assistance, it is limited in three ways:

- the waiver is not available to pro bono matters undertaken outside the Law Society and Bar Association Schemes
- the waiver does not apply to other fees payable to the courts during the course of litigation
- the waiver is limited to the Local, District and Supreme Courts.

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[123] NSW Bar Association *Submission* 12.

[124] Public Interest Law Clearing House (Vic), Inc *Submission* 7.

[125] e.g., MR P Jeffares *Submission* 2, Intellectual Disability Rights Service, Inc *Submission* 3.

The Law Society has made representations to the Attorney General in relation to the last two of these issues. The Society is particularly concerned about the number of claims being made on the Law Foundation Disbursements Fund for reimbursement of court fees.

Disbursements assistance can therefore be of enormous value in encouraging lawyers to undertake pro bono work. However, existing sources of assistance are limited, and disbursement expenses continue to be a problem for many lawyers and pro bono providers.

5.3.2 Transcripts

Transcripts are the written record of the evidence and submissions made to a court or tribunal. The cost of transcripts is borne by those who request them. This cost can be very high - as much as $700 for one day's transcript. While the legal assistance schemes can sometimes arrange for transcripts to be provided free or at a reduced fee, this only occurs on a case-by-case basis. One participant supported formal arrangements for transcript to be provided free of charge:

> *The cooperation of Court officers and Auscript should be encouraged in the provision of transcripts for no charge or photocopying rates.*[126]

In some cases, this could be an important form of financial support for pro bono services.

5.3.3 Contribution to fees by pro bono clients

The three major schemes take slightly different approaches to the question of contribution to fees by clients. The Law Society Pro Bono Scheme Guidelines specifically exclude conditional fee work, but do include work performed at a substantially reduced fee.[127] Similarly, PILCH refers matters with the underlying goal that services be provided free of charge. However, PILCH guidelines also contemplate the possibility of member firms acting on a reduced fee basis, or requiring clients to contribute to the cost of disbursements.[128] This reflects the fact that in some cases it is only possible to assist the client if he or she makes a contribution to the costs of the matter. The Bar's Scheme does provide free legal assistance, but the assistance is limited to the provision of initial advice or an urgent appearance in court. Where further legal services are required, the question of payment for those services must be negotiated between counsel and client.

Given that the assistance provided through the schemes will not necessarily be free, it is important that clients understand the basis on which their matter is being referred.[129] Anecdotal evidence suggests that clients are sometimes surprised to find that they may have to pay some part of the fees or disbursements in a matter which they believed would be done for free:

> *There is a great deal of confusion amongst our clients who have dealt with private solicitors or been referred to pro bono services about what they may have to pay for. It would be confusing for clients if it is not made absolutely clear on what basis they are being offered a service.*[130]

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[126] NSW Bar Association *Submission* 12.

[127] Law Society of New South Wales *Law Society Pro Bono Scheme - Key Features* (information sheet).

[128] Public Interest Law Clearing House Inc, pamphlet

[129] This issue was also discussed in relation to a broader range of matters in section 5.7.3.

[130] Intellectual Disability Rights Service, Inc *Submission* 3.

One way to overcome such confusion is for the referral scheme to take responsibility for ensuring that the client understands the basis on which the referral is being made. This could be achieved through written information being provided by the scheme, or through a written retainer agreement between the lawyer and the client which the lawyer, by joining the pro bono referral panel, agrees to use. The American Bar Association's pro bono guidelines recommend that a client receive information from both the scheme and the volunteer lawyer:

> *Standard 3.1 Establishment of Relationships*
>
> *A pro bono program should clearly communicate the nature of the relationship it is establishing with each client and volunteer and delineate each party's rights and responsibilities. A program should aid a client and the volunteer who is representing or otherwise assisting that client in communicating clearly their duties and responsibilities to each other.*[131]

The Law Society Pro Bono Scheme now includes this issue in the information sheet it has developed for solicitors. This states that pro bono work is work performed for free or at a substantially reduced fee, and that conditional fee work is excluded from the Scheme. In describing the operation of the Scheme, the information sheet sets out the steps involved in referring an application. These include the following:

> *The firm enters into a normal solicitor/client relationship and provides the client with a costs agreement if there is a substantially reduced fee involved. In any event, the solicitor should provide a disclosure document to preserve entitlement to party/party costs.*[132]

PILCH takes this one step further. When a referral is made, PILCH arranges and attends an introductory meeting between the client and the lawyer. At this meeting, factual issues are clarified and the extent of assistance is established. A letter confirming the outcome of the meeting is then sent by PILCH to the client.

It would therefore seem that the problem of confusion among clients as to the extent to which they may have to contribute to the costs of a matter is one that could be addressed through the development of procedures that ensure that clients receive written information about the basis on which their case is being handled. In addition, referral schemes could develop guidelines on when matters will be referred on a reduced fee basis rather than for free. This information could then be provided to participating lawyers, clients and other organisations that refer matters to the scheme.

5.4 Infrastructure

5.4.1 Registers of non-legal experts

The Law Society Pro Bono Scheme and PILCH are already involving non-legal experts in their schemes as a means of supporting the pro bono work being done by participating lawyers. The Law Society Scheme maintains a Pro Bono Medical Register and a Pro Bono Mediation Register. PILCH provides access to accountants and mediators through a system of associate membership.

The continued development of registers of other non-legal professionals who are prepared to provide their services on a pro bono basis was regarded as an important

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[131] American Bar Association Standing Committee on Lawyers' Public Service Responsibility *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means* American Bar Association Chicago 1996, 4.

[132] Law Society of New South Wales *Law Society Pro Bono Scheme - Key Features* (information sheet).

issue by practitioners consulted in the course of this research. While schemes have been able to obtain these services on many occasions, it has been very ad hoc and has involved an enormous amount of work in each case. The Manager of PILCH (Vic) gave the following example to illustrate how critical the services of non-legal professionals can be:

> *In a recent planning case for a community group I organised for a law firm and barrister to act. However, the legal assistance was not sufficient to run the case as expert planning evidence from an architect was required to properly put the community group's case. It was fortuitous that an architect agreed to prepare a report on a pro bono basis, and then the community group came up with a small amount of money to pay for his appearance at the hearing to give evidence.*[133]

As suggested by one participant, further development of these registers could be carried out most effectively through the relevant professional associations.[134] However, to provide effective support for pro bono legal services, these registers would need to be available to all lawyers performing pro bono work, not just those participating in the schemes.

5.4.2 Support networks

Developing pro bono networks within the legal profession was raised as an important issue in several submissions to the Centre. One submission stressed the importance of nurturing a culture of cooperation amongst legal practitioners who do work on a pro bono basis. The sharing of information and resources was seen as the only way to properly meet the need for pro bono legal services:

> *...it is only by effective communication, coordination, cooperation, and the sharing of information, ideas, and resources that the real need for pro bono services can properly be identified and met.*[135]

A regional solicitor suggested that a support network of agents would be helpful:

> *There should be a support network to enable pro bono work to be dealt with through similarly motivated agents, for example, mentions, counsel's advice and so on.*[136]

Another submission drew attention to the need for coordination between the two arms of the profession:

> *I have found that support services are vital to the successful referral of pro bono public interest cases. If a case is of a litigious nature and a barrister agrees to appear, the referral to a law firm follows easily. Law firms however are very reluctant to take on litigious matters if they have to 'call up old favours' at the bar to get a barrister to appear.*[137]

One lawyer interviewed in the course of the project suggested that larger law firms might be able to assist smaller firms in pro bono matters by providing assistance on discrete legal tasks, such as research or specialist advice. He also favoured broadening the scope of the pro bono assistance provided by large firms to include, for example, making library resources available to legal centres.

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[133] Public Interest Law Clearing House (Vic), Inc *Submission* 7.

[134] Public Interest Law Clearing House (Vic), Inc *Submission* 7.

[135] Freehill, Hollingdale & Page *Submission* 5.

[136] Mr R J Mitchell *Submission* 1.

[137] Public Interest Law Clearing House (Vic), Inc *Submission* 7.

A pro bono scheme manager noted that administrative support would also be useful to the provision of pro bono services:

> *Paralegal and administrative support would undoubtedly facilitate improved pro bono services. Law students and paralegals may be useful in providing this kind of support.*[138]

Another example of the value of support networks within the profession can be seen in Illinois, USA, where some pro bono programs have introduced a mentoring system whereby experienced lawyers help inexperienced lawyers with matters that prove more complicated than originally anticipated.[139]

Several lawyers interviewed for the project stated that they were able to rely on their own networks to provide support where necessary. These lawyers did not see the need for any organised development of pro bono networks. However, it would seem that, particularly for regional lawyers and pro bono schemes involved in referring litigation matters, organised networks could provide useful support to their pro bono work.

5.4.3 Training

Several participants nominated training as a means of encouraging and supporting the provision of pro bono services. For example:

> *The provision of training and support for practitioners is a valuable method for attracting solicitors to undertake pro bono work. It is essential that pro bono practitioners are nurtured and that matters are not simply "dumped" on firms who may feel they do not have the requisite expertise which the matter demands.*[140]

> *We believe that training and administrative assistance as well as a disbursements fund would provide incentives, particularly for small firms and sole practitioners to provide pro bono services.*[141]

One participant also saw training as important to the development of a wider pro bono culture.

On the other hand, two participants took a different approach. For one, training was a personal, professional responsibility.[142] Another felt that training in relation to pro bono work was not needed in their branch of the profession. They stated:

> *The Association understands that one of the biggest problems facing the profession in the USA is the cost of training practitioners to do pro bono work. This results from the way in which the American systems narrow the potential for practitioner involvement. It is further aggravated by the "over specialisation" of American practitioners. Neither of these problems apply to the NSW Bar and the Association is wary of any scheme which might tend to promote them.*[143]

Apart from encouraging lawyers to undertake pro bono work, training can be used to educate lawyers on recurrent legal issues. For example, PILCH deals with numerous requests for assistance from non-profit organisations on incorporation, how to secure

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138 Law Society Pro Bono Scheme *Submission* 10.

139 W D McGrath 'Pro Bono Myths and Realities' *Illinois Bar Journal* Vol 83 January 1995, 32.

140 Public Interest Law Clearing House, Inc *Submission* 8.

141 Intellectual Disability Rights Service, Inc *Submission* 3.

142 Mr R Cornall *Submission* 13.

143 NSW Bar Association *Submission* 12.

tax deductibility status, and contracting out arrangements.[144] Training practitioners in these issues would be a valuable use of resources.

Training can also be used to equip practitioners to deal with new issues. PILCH recently ran a workshop on cross-cultural training, to enable solicitors to provide services to clients in connection with the Human Rights and Equal Opportunity Commission's Stolen Generation Inquiry. The workshop explored indigenous legal issues and recommended methods of communication when dealing with Aboriginal clients.[145]

The importance of training has been borne out by studies in the United States:

- A review of pro bono services in Maryland found that this support was particularly valued by attorneys who volunteered for programs that targeted clients who had legal problems outside their general experience. The training and case support provided by the pro bono scheme ensured a high quality of legal representation. By providing training, the pro bono scheme was also able to attract lawyers who were interested in the opportunity to learn a new area of law.[146]
- In Illinois, volunteer lawyer programs provide training sessions as a means of increasing the pool of lawyers who can participate in the program. For example, the Pro Bono Committee of one local bar association sponsored a workshop on family law to enable practitioners inexperienced in this area of law to take on pro bono family law cases. The Committee also provided attendees with relevant precedents.

While agreeing that training should be part of the work of pro bono schemes, one participant in the project raised the question of who should fund such training:

> *Given that the effect of [pro bono] schemes is to assist those people unable to access the justice system through Legal Aid (whether for financial or other reasons) and the fact that the profession provides a subsidy to government, this becomes a provision of protection of civil rights by government. The cost should be borne by government and not by the profession through its Associations or by the individual practitioner.*[147]

Other participants who discussed training tended to assume that it would be offered as part of the activities of the pro bono schemes.

5.5 Availability of pro bono services

It is not possible to assess the level of resources that is required to meet the demand for pro bono legal services in New South Wales. No data is available to indicate the level of need for pro bono legal services in the community or the extent to which that need is being met. Some indication of the potential level of demand for pro bono services can be gained by considering the number of applications made for legal aid. In 1995-96, a total of 132,287 applications for assistance were made to Legal Aid NSW. Of these, 13,768 were refused.[148] Many of the 13,768 persons refused legal aid may have been eligible for pro bono legal assistance through one of the referral schemes.

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[144] Public Interest Law Clearing House, Inc *Submission* 8.

[145] Public Interest Law Clearing House, Inc *Submission* 8.

[146] People's Pro Bono Action Center, Inc *Furthering the Pro Bono Commitment in Maryland: An Assessment of the State's Volunteer Legal Services Delivery System* People's Pro Bono Action Center, Inc Baltimore 1992, 100.

[147] National Legal Aid *Submission* 4.

[148] Legal Aid NSW 1996 *Annual Report*, 40.

Currently, the referral schemes are able to find lawyers to handle all cases that are eligible for assistance. However, at present, two of the schemes do not widely advertise their services. In the case of the Law Society Pro Bono Scheme, clients might find out about it if they telephone the Society's Community Assistance Department, or if they are referred by their solicitor, the courts or other agencies such as the Legal Aid Commission and community legal centres.[149] The Bar Association has avoided widely publicising its scheme in the media "because of the limit on the number of applicants the administrative side of the Scheme can handle".[150] However, it has advised members of Parliament of the Scheme's existence and in July 1995 publicised the Scheme to community legal centres at a cocktail party.[151]

PILCH, with its more limited target audience, advertises its services in a range of ways:

- outreach visits by staff to community organisations, the Legal Aid Commission and community legal centres
- distribution of promotional material, including an information booklet
- media interviews
- follow up letters to potential clients mentioned in the media
- articles and flyers in journals and bulletins of professional and community organisations
- presentations at law firms and universities.[152]

Given the potential level of demand for pro bono legal services indicated by the number of legal aid refusals, it is highly likely that wider publicity of their schemes by the Law Society and Bar Association would produce more applications than the schemes could administer. However, this problem needs to be balanced against the wider community need for access to justice. It is possible that deserving cases are not reaching the schemes because organisations that might be in a position to refer those cases to the schemes are not aware of the schemes' existence. Strategies to promote pro bono services are discussed in more detail in chapter 6.

5.6 Conclusion

This chapter addressed the second major theme that emerged from the research findings: *resourcing pro bono legal services.* Four related sub-themes were discussed. These were *human resources, financial resources, infrastructure* and *availability of pro bono services*.

The following chapter draws together the research findings and makes a number of recommendations in relation to the delivery of pro bono legal services. The chapter also examines the issue of the coordination of pro bono legal services, and explores possible models for the improved structure and organisation of services.

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149 Law Society Pro Bono Scheme Response to questionnaire *Future directions in pro bono legal services in New South Wales*.

150 NSW Bar Association Response to questionnaire *Future directions in pro bono legal services in New South Wales*.

151 ibid.

152 PILCH (NSW) Response to questionnaire *Future directions in pro bono legal services in New South Wales*.

6

The way forward: principles for the operation of pro bono legal services

6.1 Introduction

The previous two chapters provided the findings from this research and the results from other studies on pro bono legal services. In this chapter, these findings are brought together and the researchers' conclusions from the findings are presented.

This review of pro bono legal services involved four elements:

- profile existing pro bono legal services in New South Wales
- define pro bono legal services, as they may ideally be provided
- review the effectiveness of the existing structure of pro bono services, particularly in regard to accessibility, availability, funding, quality and coordination
- make proposals for the improved structure, organisation and delivery of pro bono legal services.

This chapter addresses the last of these, making proposals in relation to the structure, organisation and delivery of pro bono services. These proposals divide into two groups:

- principles or standards to improve the present delivery of pro bono legal services;
- proposals for a model or models for the improved structure and organisation of pro bono legal services in New South Wales.

Before setting out these principles and models, however, the chapter summarises the debate surrounding the definition of pro bono legal services and puts forward a definition to serve as a basis for making recommendations for the future delivery of those services.

6.2 Defining pro bono legal services

6.2.1 Background

An essential requirement for a fair, efficient and effective legal system is that all people in Australia, irrespective of means, should have access to high quality legal services or effective dispute resolution mechanisms necessary to protect their rights or interests.[153] A critical element in access to legal services is cost.

[153] Access to Justice Advisory Committee *Access to Justice - an action plan* Access to Justice Advisory Committee Canberra 1994 para 1.9.

Most people seeking legal assistance in New South Wales must pay the fees and charges as agreed with their solicitor or barrister. In some cases these costs may be discounted after negotiation or, in the case of civil litigation, may be offset by the recovery of a proportion of the costs from the other party if the case is successful. However, for many people the costs of legal advice and representation are a fundamental barrier to the legal system.

> *The objective of equality before the law is unattainable if people experience barriers that prevent them from enforcing their rights. The most obvious barriers are the financial difficulties faced by people who cannot afford legal advice and representation.*[154]

Legal services provided 'pro bono' are an important mechanism for overcoming this barrier. They have traditionally been provided by lawyers as a matter of professional obligation. The basis for their provision was explained in the following terms by the Law Society of New South Wales' Pro Bono Task Force:

> *Since the well being of society and its institutions depends on the rule of law and the protection of individual and community rights and freedom, lawyers as persons who possess unique knowledge and skills in this context have a responsibility towards any segment of society which is denied the protection of the law and access to legal remedies.*[155]

However, pro bono work can also provide some benefits to lawyers. The Solicitors' *Pro Bono* Group, recently established to support pro bono activity undertaken by solicitors in England and Wales, describes these benefits as including:

- Personal development

  Pro bono work, as well as extending legal expertise, is also likely to extend the development of personal skills and broaden horizons. At the same time, undertaking *pro bono* activities can give valuable insight into other types of organisation.

- Training

  Both in practical skills such as interviewing, time management and communication as well as legal skills. Those undertaking *pro bono* work may also gain skills normally difficult to obtain within a larger law firm for example management skills.

- Improved staff morale

  Firms with established *pro bono* programmes report that employee perception of the firm is enhanced by the knowledge that the firm undertakes pro bono work and therefore demonstrates that it is a socially responsible member of the business community. This effect is not limited to those engaged in the *pro bono* activity itself but, provided the programme is well-known, should extend to all members of the firm so strengthening identity.

- Public relations and business development

  Undertaking *pro bono* work allows individual firms to build closer links with the local community and at the same time provides an opportunity to enhance the reputation of solicitors amongst the public and the business community as a whole.[156]

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[154] ibid, xxxvii.

[155] Pro Bono Task Force Report, 5.

[156] Solicitors *Pro bono* Group *Information pamphlet* 1997.

6.2.2 Issues relating to a definition of 'pro bono legal services'

While the provision of pro bono legal services by lawyers has a long tradition, there is a range of views on what constitutes pro bono service. Participants in the project discussed three specific issues related to the definition of pro bono legal services:

- the types of services which constitute pro bono work (see section 4.3)
- who should be eligible for pro bono legal assistance (see section 4.6)
- what remuneration, if any, a lawyer may accept for pro bono work (see section 4.4).

What types of services constitute pro bono work?

The view supported by most participants, and endorsed by the Centre, is that only 'professional legal services' should be regarded as pro bono work. 'Professional legal services' encompasses a wide range of activities which draw upon a lawyer's legal training, experience and skills. It includes legal advice and representation as well as activities designed to improve particular laws or aspects of the legal system. Many lawyers will choose to fulfill their sense of public duty through general civic and charitable activities, such as membership of the board of a hospital. While these services should be recognised and encouraged, they should not be regarded as pro bono legal services if they do not involve the exercise of professional legal skills.

Which clients should be eligible for pro bono legal services?

Pro bono legal assistance should be offered to those who lack the financial means to afford legal services. Organisations that represent disadvantaged people should also have access to pro bono legal assistance. Cases involving issues of public interest should also qualify for pro bono assistance, provided that the matter is one that could not be pursued without such assistance. However, a matter need not always involve a question of public interest to qualify for pro bono assistance.

On what basis should legal services be provided?

In recent years the view that pro bono work only involves the provision of legal assistance for free has been broadened to include assistance provided at a substantially reduced fee. An issue arises, however, as to whether work performed on a speculative or contingency fee basis should be considered as pro bono assistance. As a general principle, the research indicates that work performed on this basis, or pursuant to a grant of legal aid, should not be regarded as pro bono work. However, work performed on a conditional fee basis could be referred by a pro bono scheme if fee recovery only occurs to the extent that a costs order is made in favour of the client and costs are recovered from the losing party. This issue is addressed in Principle 19.

Where services are being offered on a reduced fee, rather than free, basis, clients should be made fully aware of the extent to which they will be required to contribute to the costs of the case. This issue is addressed in Principle 6 below.

6.2.3 A definition of 'pro bono legal services'

Based on the research findings outlined above, the following definition has been developed by the Centre.

> *Definition of 'pro bono legal services'*
>
> Pro bono legal services are services that involve the exercise of professional legal skills and are services provided on a free or substantially reduced fee basis. They are services that are provided for:

- people who can demonstrate a need for legal assistance but cannot afford the full cost of a lawyer's services at the market rate without financial hardship
- non-profit organisations which work on behalf of members of the community who are disadvantaged or marginalised, or which work for the public good
- public interest matters, being matters of broad community concern which would not otherwise be pursued.

6.3 Principles for the delivery of pro bono legal services

6.3.1 The Principles

The terms of reference for this project required the researchers to examine existing pro bono services in New South Wales. In particular, the terms of reference called for a review of the following aspects of those services:

- quality
- resourcing
- accessibility and availability.

The research findings lead to a number of principles and standards that should apply to the provision of pro bono legal services. Some of these relate only to the operation of formal pro bono schemes, while others are relevant to individual practitioners or firms that develop their own pro bono programs.

In reading the following sections, it is important to note that the Centre did not conduct a detailed evaluation of each pro bono scheme. Rather, the purpose of the research was to recommend general principles that should guide the operation and future development of pro bono services.

A description of these principles follows and, as an aid to understanding their application, a table indicates when a specific principle applies to pro bono work generally, to the operation of pro bono schemes and to firms that establish pro bono programs.

PRINCIPLES FOR THE DELIVERY OF PRO BONO LEGAL SERVICES

THE ROLE OF PRO BONO

Principle 1 - pro bono legal services complement legal aid

The primary responsibility for ensuring access to justice for all people, regardless of their means, rests with the government. Pro bono legal services complement, and do not replace, publicly funded legal services.

Principle 2 - the legal aid debate

The legal profession and schemes coordinating pro bono legal services will take an active part in the debate about legal aid funding by:

- collecting statistical information about the amount and value of the pro bono legal services provided by the profession. This information should be collected consistently and on a coordinated basis;
- measuring the demand for pro bono services against changes in legal aid funding; and

- informing governments and the community through the media and other avenues about the profession's commitment to providing pro bono legal services and the need for legal aid funding to be maintained.

QUALITY

Principle 3 - referral of cases by schemes

Referring pro bono cases to lawyers with appropriate skills is essential to ensuring quality in the delivery of pro bono legal services. To do this effectively, a pro bono referral scheme will have a program for regularly updating their register of lawyers.

Principle 4 - monitoring of pro bono cases

A pro bono referral scheme will establish a system for obtaining information from the participating lawyers about the progress of matters, and for obtaining feedback from clients on the referral.

Principle 5 - complaints procedure

A pro bono referral scheme will establish a policy and procedure for addressing complaints from clients or lawyers about the scheme's operation. Both lawyers and clients will be advised of the scheme's procedure for dealing with complaints.

Principle 6 - providing information to participants

- A pro bono scheme will ensure that lawyers and clients who participate in the scheme fully understand what is expected of them and what they can expect from the scheme. A scheme will develop written protocols of conduct for this purpose.
- A scheme will assist participating lawyers to clearly communicate to their client the basis on which assistance is provided and the factors against which the progress of the case will be monitored. This will include precise information about any contribution to costs that is to be made by the client.

Principle 7 - ensuring parity of treatment for pro bono cases within law firms

Law firms will adopt the following measures to support pro bono work within their firms to ensure that the work carried out is of equal quality to work carried out in paying matters:

- Senior partners will contribute to the development of a pro bono culture within their firm by actively and visibly supporting their firm's pro bono efforts.
- Firms will incorporate into written guidelines a commitment to equality of treatment between paying and pro bono matters.
- Each firm will integrate pro bono work into its regular business by recording and evaluating pro bono work in the same manner as paying work.

RESOURCING

Principle 8 - access to a disbursements assistance fund

Where a matter is conducted by a lawyer on a pro bono basis, the client is relieved of the obligation to pay full professional legal fees. However, the problem of disbursements expenses remains. To be fully effective, pro bono legal services must be supported by one or a number of schemes for the loan of funds to meet disbursements.

Principle 9 - developing a pro bono culture

The development of a pro bono culture can only occur through a widespread effort across all areas of the profession. This initiative needs to include:

- partner leadership within law firms on the issue of pro bono work;
- visible participation in pro bono work by law academics and prominent members of the practising profession, in order to provide role models for law students and junior members of the profession. This could include involvement in secondments, major cases or projects and the establishment of mentoring schemes; and
- the introduction of the subject of pro bono work at an early point in the law school curriculum, including the opportunity to participate in pro bono legal services.

Principle 10 - pro bono networks within the legal profession

Pro bono schemes and other pro bono providers will collaborate for the purpose of developing pro bono networks within the legal profession. In particular, they will work at establishing

- a system of pro bono agency arrangements
- research and specialist support networks

for lawyers providing pro bono services.

Principle 11 - other pro bono network arrangements

Law schools, pro bono schemes and other pro bono providers will collaborate to explore ways in which law students can provide support to pro bono schemes and to the providers of pro bono services.

Principle 12 - recruitment of lawyers to pro bono schemes

Pro bono schemes will develop a range of recruitment measures (such as written material seminars and personal approaches) to appeal to lawyers with different levels of motivation to conduct pro bono work. Before undertaking major recruitment efforts, however, pro bono schemes will ensure that they have an efficient referral system in place and that they will be able to involve new lawyers in pro bono work immediately.

Principle 13 - providing different avenues for participation

Pro bono schemes will develop a range of ways to involve lawyers in pro bono services. These could include direct representation of clients, interviewing of clients for intake, advice only services, recruitment of lawyers and mentoring of junior lawyers. This will enable lawyers who work outside the areas in which pro bono services are required, but who are willing to participate in pro bono programs, to engage in pro bono work.

Principle 14 - training needs

Pro bono schemes will identify the training needs of lawyers providing pro bono services and the most effective ways of meeting those needs. In this context, training will include:

- training in specific legal issues commonly raised in pro bono matters
- training in communication skills and cross-cultural issues
- promotion of a pro bono culture within the legal profession.

Principle 15 - recognition of pro bono work

Pro bono schemes will develop different ways to recognise the efforts of participating lawyers. These could include publicising examples of pro bono work in the journals and newsletters of professional associations, promoting and supporting the existing pro bono awards and encouraging clients to express their appreciation directly to their lawyer at the conclusion of the case.

Principle 16 - avenues for disbursements assistance

Pro bono schemes and other pro bono providers must play an active role in identifying and securing avenues for disbursements assistance. This would include, for example, negotiating formal agreements with the relevant agencies for the provision of transcripts to pro bono clients at no charge.

Principle 17 - registers of non-legal experts

Pro bono schemes and other pro bono providers must collaborate on the development of registers of non-legal experts prepared to provide their services for free or at a substantially reduced fee. The registers need to be established with the support of the relevant professional associations and build on the registers already developed by the schemes.

Principle 18 - contributions to fees by clients

Pro bono schemes will develop policies on the circumstances in which they will refer matters on a reduced fee basis rather than for free. These policies will then be publicised to clients, participating lawyers and referring organisations.

Principle 19 - referring cases on a conditional fee basis

Pro bono referral schemes can refer some cases on a conditional fee basis. However, such referrals will only occur under the following conditions:

- if the client is successful, the legal representative will only be entitled to recover costs to the extent that a costs order is made in favour of the client and costs can be recovered from the losing party
- in the circumstances of the case, it is not possible to organise a referral on any basis other than a conditional fee arrangement.

Schemes will develop and publish policies on the circumstances in which they will refer cases on a conditional fee basis. These policies will be consistent with the limitations set out above.

PROMOTION

Principle 20 - publishing and promoting guidelines

Eligibility criteria for each pro bono scheme will be publicised to those organisations who may be in a position to refer clients to the schemes. This will be organised by:

- publishing the guidelines in booklet form for distribution to community legal centres, legal aid offices and other relevant organisations and to members of the legal profession
- representatives of the schemes visiting community legal centres, legal aid offices and other organisations to provide information about the schemes' services.

Principle 21 - detailed eligibility criteria

The guidelines for each pro bono scheme will include details of the criteria which establish a client's eligibility for the scheme.

Table 6.1 Application of principles

	Pro bono generally	Pro bono schemes	Firms
THE ROLE OF PRO BONO			
Principle 1	√		
Principle 2	√		
QUALITY			
Principle 3		√	
Principle 4		√	
Principle 5		√	
Principle 6		√	√
Principle 7			√
RESOURCING			
Principle 8	√		
Principle 9	√		
Principle 10	√		
Principle 11	√		
Principle 12		√	
Principle 13		√	
Principle 14		√	
Principle 15		√	
Principle 16		√	√
Principle 17		√	√
Principle 18		√	
PROMOTION			
Principle 19		√	
Principle 20		√	√
Principle 21		√	√

6.3.2 The role of pro bono: Principles 1 and 2

(See section 4.5: The relationship between legal aid and pro bono legal services)

In its report to the Council of the Law Society of New South Wales, the Pro Bono Task Force stated that governments must maintain and increase their financial commitment to legal aid services. This view was supported by many of the participants in this project. *Principle 1* is a restatement of this position.

The legal profession and the schemes coordinating pro bono legal services have an important role to play in the legal aid debate by providing information on the community's demand for those services and the profession's capacity to provide them. *Principle 2* arises from the research findings and details specific ways in which the schemes and the profession can contribute to this debate.

6.3.3 Quality: Principles 3 - 7

(See section 4.7: Quality of pro bono legal services)

Principles applying to pro bono referral schemes

The research findings indicated a number of different steps that a pro bono referral scheme can take to ensure that high quality legal services are provided by practitioners participating in the scheme. *Principle 3* sets out the first of these, which is the referral of cases to lawyers with appropriate expertise.

However, this is only the first step in ensuring that a high quality service is received by pro bono clients. On-going monitoring of cases is also important, together with a mechanism for receiving and resolving complaints. These are detailed in *Principles 4 and 5.*

Principle 6 reflects the importance of clearly communicating to clients the parameters of the assistance to be provided. This approach is also supported by the ABA, whose pro bono standards favour the provision of written information to clients. Providing clients with information about the basis of the referral is relevant not only to discussions about quality in pro bono legal services. One submission to the project also referred to problems arising when clients did not realise that legal services were being provided on a reduced fee, rather than free, basis. Specific written information therefore needs to be provided to clients about the extent to which they are expected to contribute to the costs of the matter. This is also referred to in *Principle 6*.

Principles applying to practitioners

Once a pro bono matter has been accepted by a firm, it is important that the matter receive treatment equal to that of paying matters. The research findings indicate three measures that can be put in place to ensure parity of treatment within law firms for pro bono and paying matters. These are set out in *Principle 7.*

6.3.4 Resourcing: Principles 8-19

(See section 5.2: Human resources, section 5.3: Financial resources and section 5.4: Infrastructure)

Principles applying to pro bono generally

Effective disbursements assistance is essential to the provision of pro bono services: while lawyers may be willing to provide their professional services for free, they may be less willing to bear the expenses involved in accepting the matter. These expenses can be a particular impediment, for example, in litigation involving expert witnesses and multiple parties. The need for disbursements assistance was noted by several participants, and by the Pro Bono Task Force in its 1992 report.[157] At present in New

[157] Pro Bono Task Force Report, 16.

South Wales, there is only one disbursements assistance fund available to pro bono matters - the Law Foundation Pro Bono Disbursements Fund.

Principle 8 acknowledges the critical nature of the assistance provided by the Fund, and supports efforts to increase disbursements assistance through the establishment of other funds of this nature.

Essential to the success of future efforts to promote and increase participation in pro bono practice will be the development of a pro bono culture amongst lawyers. This factor was noted as important by a number of participants and is one of PILCH's stated goals. A pro bono culture can be fostered in different ways, most importantly through the leadership of senior members of the legal profession. Education is also an important factor, although the survey of Law Deans conducted for this project suggests that pro bono practice is rarely discussed within Law School curricula. *Principle 9* is concerned with ways in which a pro bono culture can be promoted within the New South Wales legal profession, including possible collaboration between pro bono programs, Law Schools and law firms.

Participants in the project suggested a number of other ways that support networks could assist lawyers conducting pro bono matters. These are set out in *Principles 10 and 11*. As a general principle, there is support for the development of stronger links amongst legal practitioners who conduct pro bono work as a means of fostering a pro bono culture. However, this type of network could also be used to provide practical support to pro bono practitioners, particularly to solicitors working in regional areas or in small firms. For example, networks could be useful in coordinating barristers and solicitors to work on cases.

A regional solicitor suggested that it would be helpful to have a support network of agents, to assist with (for example) mentions and counsel's advice. Other participants raised the possibility of larger firms providing smaller firms with assistance on discrete tasks such as legal research and specialist advice. Finally, by establishing broader links with Law Schools, pro bono schemes and participating lawyers could draw on students for administrative and paralegal assistance.

Principles applying to pro bono schemes

The 1992 Maryland study[158] made a range of findings in relation to the factors that influence a lawyer's level of participation in pro bono work. A number of submissions referred to similar factors as operating in Australia. For example, the Maryland study confirmed the effectiveness of personal approaches in recruiting lawyers to pro bono programs. Local pro bono programs have also observed this phenomenon.

Principles 12 and 13 are concerned with increasing the level of lawyer participation in pro bono schemes. They draw on the findings of the Maryland study together with research into the activities of pro bono programs in Australia. However, to achieve maximum participation in pro bono programs, an understanding of the lawyer population that is being called on to participate is necessary. For this reason, it is recommended that a study similar to the Maryland study be conducted in New South Wales. This recommendation is discussed in detail in section 7.3.2.

Principle 14 reflects the research findings in relation to the training of pro bono practitioners. Several participants nominated training as a valuable means of assisting

[158] People's Pro Bono Action Center Inc *Furthering the Pro Bono Commitment in Maryland: An Assessment of the State's Volunteer Legal Services Delivery System* Baltimore 1992.

pro bono practitioners. It was seen as a way of encouraging practitioners to accept pro bono cases as well as a tool for developing a wider pro bono culture. Experience in the United States supports this approach. The Maryland study shows that, through offering training, pro bono schemes were not only able to ensure a high quality of legal service, but were also able to attract lawyers who were interested in the opportunity to learn about new areas of law.[159]

Training can also be used to maximise the resources available to pro bono services. By educating lawyers on recurrent legal issues, a pro bono scheme can increase the number of participants equipped to take cases in that area of law. Training can also be used to provide lawyers with the skills to deal with new issues or to communicate with client groups having special needs.

Principle 15 acknowledges the important role that recognition of pro bono work can play in maintaining participation in both direct pro bono work and work conducted through pro bono schemes. Recognition can take a variety of forms and can be of a private or public nature. The Maryland study showed that an important source of appreciation for pro bono lawyers was clients themselves. This suggests that pro bono programs should develop a range of ways to acknowledge the work done by participating lawyers, including encouraging direct expressions of appreciation from pro bono clients.

While disbursements assistance funds (discussed above in relation to Principle 8) are essential to support pro bono legal services, it is unlikely that such funds will ever operate from a sufficient capital base to provide disbursements assistance to all pro bono matters handled in New South Wales. *Principles 16 and 17* emphasise the importance of pro bono schemes developing other means of disbursements support. Examples of avenues of assistance already being explored by pro bono schemes are waiver of court fees in pro bono matters, and the provision of transcript for no charge. Also significant is the work that has been done by each pro bono scheme to develop registers of non-legal experts prepared to provide their services for no charge in pro bono matters. The continued development of these types of registers was regarded as an important issue by practitioners consulted for this project.

Principle 18 relates to the issue of contribution to fees by pro bono clients. The definition of pro bono legal services set out at the beginning of this chapter recognised that pro bono work could be conducted at a reduced fee, as well as for free. In these cases, it is important that clients understand that they may have to contribute to the costs involved in a case and what that contribution will be. However, schemes also need to develop policies on referring cases on a reduced fee basis to ensure that their integrity as a pro bono scheme is maintained, and that they do not become, in the words of one participant, 'a glorified referral service'.[160]

Principle 19 addresses the difficult question of pro bono schemes referring cases on a conditional fee basis. In certain cases, making a referral on a conditional fee basis may be the only way that a pro bono referral scheme can obtain legal representation for a client. While the primary aim of the schemes should be to refer cases on a free or reduced fee basis, they should be able to refer cases on a conditional fee basis in special circumstances. Such referrals should be minimised and should only occur where referral on any other basis is impossible.

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[159] For details about this study, see section 5.4.3

[160] Public Interest Law Clearing House (Vic), Inc *Submission* 7.

6.3.5 Promotion: Principles 20 and 21

(See section 5.5: Availability of pro bono services)

At present, the pro bono schemes are not well known in the community, and access to the schemes appears ad hoc. Wide publicity of the schemes to the general community would undoubtedly produce more applications than the schemes could administer. It would also be inconsistent with the place that pro bono services occupy on the legal services 'map'. Pro bono services are a 'last resort'. They can supplement state funded legal aid services but cannot replace them. However, a question of ethics remains: do pro bono schemes need to be more widely publicised to ensure that they reach the widest audience and those most in need?

On balance, the Centre believes that pro bono schemes should promote their services, but only to organisations that might be in a position to refer cases to the schemes. Each scheme should provide these organisations with detailed eligibility criteria for the scheme to enable a referring organisation to conduct an initial screening of the client's financial circumstances and to determine whether the case is one that might fall within the scheme's guidelines. This position is set out in *Principles 20 and 21.*

6.4 Coordination and structure of pro bono legal services

The terms of reference for this project required an assessment to be made of the need for greater coordination of pro bono services in New South Wales. To the extent that greater coordination might be needed, the terms of reference also required the researchers to present a proposal for a model or models for the improved structure, organisation and delivery of pro bono services. The models considered by the Centre are described in the following paragraphs.

6.4.1 Model A - a central contact point

Under this model, a central coordinating point for pro bono legal services would be established. The existing schemes would continue to operate independently, but the coordinating agency would operate as the first point of contact, directing referring organisations or individual clients to the scheme that was most appropriate for them. This would not involve the agency in providing legal services or screening cases in detail. However, the agency would assist by advising inquirers of the most appropriate avenue of assistance.

Such a service would involve the employment of at least one designated staff member to take telephone inquiries. The agency could extend its resources by involving university students or other volunteers in the scheme. It could also explore the use of technology to provide up to date information. For example, an interactive telephone system could be used to ask callers about the nature of their legal problem and then direct them to the appropriate pro bono service. In addition, the Internet could be used to provide detailed information about each pro bono scheme, enabling inquirers to select the scheme that was most relevant to their matter.

The agency's role as a central contact point would include the development of information materials and the promotion of pro bono services to community organisations. It would also facilitate the development of pro bono networks within the legal profession and take responsibility for creating registers of non-legal experts willing to work on a pro bono basis.

As well as operating as a central information point, the agency would operate as a policy making body in the area of pro bono legal services. Policies would be developed

in consultation with practitioners and organisations who provide pro bono legal services. The agency could also conduct research projects to assist in the development of policy. The agency's other functions would include:

- the collection and dissemination of information about pro bono services
- the development of recruitment and training strategies for use by pro bono schemes
- liaison with Law Schools to develop a role for students within pro bono services
- the identification and negotiation of avenues of disbursements assistance, such as waiver of court fees.

A possible structure for the agency would involve the appointment of a coordinator, who would be assisted by a staff member who would take primary responsibility for the inquiry service. The coordinator would be responsible for policy development as well as liaison with the pro bono schemes and other pro bono service providers. In addition, the coordinator's tasks would include the supervision of the inquiry service, the promotion of pro bono work within the legal profession, the planning of training programs, liaison with relevant external organisations and on-going monitoring to minimise gaps or duplications in the delivery of pro bono legal services. Much of the coordinator's work would need to be done in consultation with the existing schemes and pro bono practitioners. Through the coordinator, the agency would take a central role in the building of pro bono networks within the legal profession.

6.4.2 Model B - a central clearing house

Under this model the existing pro bono schemes would be merged into a single clearing house, funded by a combination of membership fees and an appropriation of funds. Rather than just acting as a central information point (as in Model A), the clearing house would receive and assess applications for assistance and, where appropriate, refer matters to a solicitor or barrister willing to act on a pro bono basis. The clearing house would also promote pro bono work within the profession and to the public, monitor the quality of pro bono services, and provide training and other support to practitioners. This model is similar to the current operation of PILCH, except that it would cover all types of pro bono work rather than focusing on public interest matters.

The chief advantage of this model would be the provision of a 'one stop shop' to clients. Only one application for assistance would need to be made and potential clients would not be disadvantaged by a lack of awareness of the full range of pro bono services. The model would also completely eliminate the duplication that currently exists in some aspects of the administration of pro bono schemes. A central clearing house would result in greater consistency in service provision with the implementation of standard eligibility criteria and uniform quality control measures across all cases. Finally, a central clearing house would allow for the close monitoring of pro bono services, which would minimise the possibility of gaps or duplications in services.

A central clearing house would require the employment of two to four staff members, to screen and refer cases as well as to work on measures such as recruitment strategies and training programs.

6.4.3 Model C - a support agency

This model is based on a system operating in several jurisdictions in the United States and on the Solicitors *Pro Bono* Group recently established in England. The support agency is a coordinating agency that provides assistance to otherwise independent pro bono schemes. For example, in Maryland the People's Pro Bono Action Centre does not provide direct services to clients, but rather supports pro bono schemes by:

- collecting and disseminating forms, policies, procedures and computer software used by successful schemes
- scheduling regular visits to schemes to learn how they operate, to offer suggestions and to identify effective policies and procedures that are in place
- identifying new ways of engaging lawyers in the pro bono system
- fostering the exchange of information between schemes.

This model has the advantage of maintaining the present range of pro bono schemes, thereby offering lawyers a variety of ways to participate in pro bono work. This diversity also allows for continued local control and a sense of 'ownership' of the schemes by participants. On the other hand, a support agency is unlikely to overcome the problems posed to clients of identifying which scheme is most appropriate for them. Clients and referring agencies will still have to 'shop around' to find the scheme which is best able to assist them.

6.4.4 Model D - an advisory committee

This model would involve the least amount of change from the present position. The existing schemes would remain in operation, but a new committee would be established to provide a forum for the development and implementation of a coordinated approach to the provision of pro bono services. An example of a model like this in operation is the Maryland Pro Bono Coordinating Council. This is an organisation made up principally of pro bono legal services providers, which meets regularly to discuss issues of common concern. It does not provide services to clients nor receive direct funding. The former Law Society of New South Wales Pro Bono Committee is another example.

The committee envisaged by this model would consist of representatives from the major schemes, legal aid, community legal centres, law firms, courts and community organisations. Its functions would include:

- providing a forum for the discussion of policy issues and the exchange of ideas among pro bono service providers and users
- preparation and dissemination of information about the schemes and their eligibility criteria
- coordinating the establishment and maintenance of registers of non-legal experts
- promoting pro bono work to the legal profession
- collection and publication of statistical data on pro bono legal services.

To function effectively, the committee would require some secretariat assistance. This could be provided by a staff member working on a part-time basis, with additional resources brought in as necessary for the conduct of specific projects.

6.4.5 The preferred model

At present in New South Wales there is little coordination between the pro bono schemes or among other pro bono service providers. The research identified several areas where greater coordination between pro bono service providers would reduce administrative gaps and duplication and improve efficiency. These areas could be described as 'pro bono policy' areas and include:

- the collection of statistical information about pro bono services
- the establishment and maintenance of registers of non-legal experts
- the development of protocols of conduct for pro bono lawyers and clients
- the identification and provision of training to practitioners
- the undertaking of outreach efforts with community organisations
- the development of measures to ensure quality in the delivery of pro bono legal services.

While the research findings support greater coordination in these 'policy' areas, nothing in the data compels the consolidation of all schemes for the purposes of actually delivering pro bono legal services. Practitioners who participated in the project and who are currently involved in local pro bono schemes expressed a strong preference for maintaining control of their local scheme. They generally did not support the idea of a central clearing house, and it was evident that much of their commitment to pro bono work derived from a sense of 'ownership' of their local scheme. These findings are supported by the conclusions of the Maryland study, which found that one of the great strengths of pro bono in that State lay in the diversity of pro bono schemes in operation. Diversity means that clients are offered different access points into the pro bono system. It also provides a variety of ways for lawyers to participate in pro bono work.[161]

At the same time, however, a number of participants indicated that consumers of pro bono services are currently disadvantaged by having to 'shop around' for the service that is most appropriate to them. Potential clients may be disadvantaged by a system of independent schemes. There is also the risk that deserving cases will be left unassisted because of a lack of knowledge of available services. Improved coordination is therefore necessary to improve access to pro bono legal services.

This factor was also recognised by the Maryland study. It concluded that it would be desirable to examine the possibility of developing a state-wide telephone access system to *supplement* the current intake capacity of the pro bono legal services delivery system. The study further recommended that the access line should be placed with an existing state-wide pro bono service provider, but should be used to refer clients to the pro bono provider most appropriate to serve them.[162]

In view of these findings, the Centre supports the establishment of a Pro Bono Coordination Unit based on Model A (central information point). This is the only model that could provide centralised policy development and improved access to pro

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[161] People's Pro Bono Action Center Inc *Furthering the Pro Bono Commitment in Maryland: An Assessment of the State's Volunteer Legal Services Delivery System* Baltimore 1992, 3.

[162] id. 92-93

bono services white still allowing local and institutional schemes to operate independently.

While Model B (central clearing house) has a number of advantages in terms of streamlining the administration of pro bono services, it is not preferred because there was evidence from the research that it would not be supported by legal practitioners. This lack of support was based on a number of grounds:

- less flexibility to accommodate the expertise, work style and philosophy of different practitioners
- less "ownership" of the scheme by participating lawyers which could lead to a reduction in support for it
- more bureaucratic
- the risk that specialist areas, such as public interest matters, may be swamped by more common types of legal matters
- less choice for both clients and lawyers.

Model C (a support agency) and Model D (an advisory committee) would both have the advantage of preserving the operation of the existing schemes. However, neither model can address the problems of coordinating access to pro bono services.

The Pro Bono Coordination Unit would have the following functions:

- the development of registers of non-legal experts who are prepared to act on a pro bono basis
- promotion of pro bono schemes to community organisations
- the collection of uniform statistical information about pro bono services
- the identification and provision of education for practitioners
- the development of quality monitoring systems and client complaints procedures for use by pro bono schemes
- the development and implementation of protocols of conduct for lawyers and clients who participate in pro bono schemes
- the recruitment of lawyers to pro bono services
- the identification of avenues for disbursements assistance
- the development and implementation of written standards for the provision of information to pro bono clients about the assistance they will receive.

It would also be a central contact point for information about pro bono schemes. This would involve the Unit in:

- collecting detailed information about each pro bono scheme in operation
- establishing an inquiry service capable of directing inquirers to the pro bono scheme most appropriate to them
- publishing brochures and guides containing detailed information about the operation of the pro bono schemes, including eligibility criteria

- exploring ways in which technology could be applied to assist with the dissemination of information about pro bono legal services.

Funding of a support agency, while continuing the operation of the existing schemes, will present problems. While a grant or appropriation of funds is a possible avenue of financial support for the Unit, consideration could also be given to establishing the Unit on a subscription model. In New South Wales, PILCH provides an example of how such a model could operate. PILCH derives the bulk of its revenue from membership fees, with some additional funds coming from training courses, seminars and publications.

In other jurisdictions, the funding for similar types of agencies is received from a variety of sources. The People's Pro Bono Action Center is funded by a combination of money from the Maryland Legal Services Corporation (which receives the majority of its funding from the Interest on Lawyers Trust Accounts program) and from the Maryland Bar Foundation. The Solicitors *Pro Bono* Group, established in England in September 1997, has received its initial funding from eleven of the large English law firms. Equivalent avenues of funding may be available in New South Wales. This would need to be determined.

6.5 Conclusion

This chapter highlighted the findings from the study. The study found that the term 'pro bono legal services' is understood in different ways, and proposed a clear and precise definition. The study also found that there are multiple ways in which the delivery of pro bono legal services could be improved, so that service delivery is more effective and efficient. This chapter has set out a series of principles that should be adopted as a foundation for these improvements.

As required by the terms of reference, several models for the future structure of pro bono service delivery have been discussed. These models involve different levels of collaboration between the schemes, ranging from complete integration of all pro bono services to the continued independent operation of all schemes with some exchange of information through the forum of an advisory committee.

Only one model, however, meets the needs implicit in the research findings and in the principles set out at the beginning of this chapter. This is the establishment of a Pro Bono Coordination Unit. The Unit would undertake the important role of developing and implementing consistent policies for the delivery of pro bono services and providing support for the delivery of pro bono services. It would also provide a much needed central source of information for users of pro bono services. At the same time, by allowing the existing diversity of schemes to remain in operation, this model will build on the 'pro bono culture' that has already been established within the legal profession.

7

Further research

7.1 Introduction

The previous chapters have presented the results of the research findings and the Centre's recommendations in relation to future directions for pro bono legal services. As noted at several points in this report, however, there were questions raised in the terms of reference that it was not possible to answer within the scope of the project. Both resource and practical constraints meant that data could not be collected to analyse all of the issues relevant to the structure and delivery of pro bono legal services. Other areas for further research are also suggested by the research findings. This chapter looks back on the project and details those areas where further research should be conducted to supplement the work carried out for this project.

7.2 Further research relating to the study objectives

The terms of reference for the project required the Centre to carry out a number of tasks:

1. profile existing pro bono legal services in New South Wales
2. define pro bono legal services, as they may ideally be provided
3. review the effectiveness of the existing structure of pro bono services, particularly in regard to accessibility, availability, funding, quality and coordination
4. make proposals for the improved structure, organisation and delivery of pro bono legal services.

The Centre was able to carry out tasks 1,2 and 4 as specified in the terms of reference. However, data was not available to answer all the issues raised in the terms of reference in relation to task 3. The following specific questions could not be answered by research conducted for the project:

- Do all those who require pro bono services use the service? If there are some who do not, why not? For example, is it because they are not aware of the service?
- Are there enough pro bono services to meet the demand?
- Are pro bono services of reasonable quality? To the extent they are not, what is the problem? Do lawyers not give the matters enough time and skill? Do the circumstances of clients make provision of adequate service difficult?

To complete our understanding of the pro bono legal services environment, further research should be carried out to answer these questions. In particular, information should be obtained about:

- the extent to which relevant community organisations are aware of existing pro bono referral schemes, their eligibility criteria and how to access them

- their experience, if any, of dealing with the existing referral schemes or other pro bono service providers
- client satisfaction with pro bono legal services.

Questions relating to the level of demand for pro bono legal services, and the extent to which that demand is satisfied, can only be answered through a large scale survey on the level of legal need and the usage of legal services within the community. An example of such a survey is the survey carried out by the Australian Bureau of Statistics in 1990 at the request of the New South Wales Legal Aid Commission.[163] The aim of that survey was to assess the extent of met and unmet legal need in New South Wales, as well as to assess the accessibility of legal services.

7.3 Further research arising from the study findings

To complement and support the implementation of the principles set out in chapter 6, further research should be carried out to address the following issues:

7.3.1 Evaluation of the Pro Bono Coordination Unit

An ongoing evaluation program should be established in relation to the Pro Bono Coordination Unit. *A formative* evaluation should be carried out at the end of its first year of operation for the purposes of assessing its operation. The focus of such an evaluation would be on the processes and procedures in place and ways in which those procedures could be improved to ensure that the Unit fulfills its objectives. A further *summative* evaluation should be conducted at a later point, perhaps at the end of the second year of operation, to assess the impact of the Unit's activities.

To be fully effective, an evaluation strategy needs to be put in place from the commencement of the Unit's operations. This involves, firstly, the establishment of a set of objectives to guide the activities of the Unit. These objectives need to be accompanied by performance indicators, a set of measurable criteria against which the Unit's effectiveness can be judged. Secondly, having determined appropriate performance indicators, a computerised database needs to be designed to collect information relevant to the performance indicators. Ideally, this database would be active from the first day of the Unit's operations.

7.3.2 Comprehensive survey of the legal profession

The Maryland study[164] involved an extensive survey and interview program with over 2,000 lawyers in that State. Lawyers surveyed included those who were involved in pro bono programs, those who provided direct pro bono services and those who provided none at all. From this research, the study's authors were able to analyse the factors that influence lawyer participation in pro bono services, and make recommendations on recruitment activities and support services that could be offered by pro bono schemes.

A similar study should be conducted in New South Wales. Such a study would allow the proposed Pro Bono Coordination Unit to develop effective strategies for attracting and maintaining support for pro bono programs from volunteer lawyers. This could include possible areas for training as well as other means of providing case support to pro bono lawyers, particularly to lawyers in smaller firms or regional areas.

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[163] Reported in Civil Justice Research Centre *Civil Issues* No 3 November 1992.

[164] People's Pro Bono Action Center Inc *Furthering the Pro Bono Commitment in Maryland: An Assessment of the State's Volunteer Legal Services Delivery System* Baltimore 1992.

7.3.3 Client satisfaction surveys

A client satisfaction survey should be conducted to identify whether there are any specific problems being experienced by pro bono clients. The results of this survey could be used to feed into the quality control and case monitoring systems which will be developed by the Pro Bono Coordination Unit. Conducting such surveys at regular intervals would also enable an assessment to be made of the effectiveness of the quality control and complaint procedures established by the Unit. The client satisfaction surveys would therefore form part of the on-going evaluation of the Unit as recommended at section 7.3.1.

7.3.4 Student surveys

An important way to foster a pro bono culture is to involve law students in pro bono activities (see section 5.2.6). One study of students conducted in the United States in 1982 suggested that students' enthusiasm for voluntary work diminishes as they progress through Law School.[165] By tracking a group of students across time, and monitoring their attitudes to voluntary work, it would be possible to determine whether the same pattern occurs amongst law students in New South Wales. Such a study could also be used to identify ways in which students could be involved in pro bono work and effective ways to foster a long term pro bono commitment amongst law students.

7.4 Conclusion

This report has provided some much needed information about pro bono legal services in New South Wales, However, practical constraints meant that some areas remain for further inquiry. Further research could be carried out to determine such issues as the level of need for pro bono legal services in this State and lawyer attitudes to pro bono work. Research should also be part of the on-going development of pro bono services, with an evaluation strategy being built into the operations of the Pro Bono Coordination Unit. Research could also be used to identify ways of further developing a pro bono culture in New South Wales.

[165] RV Stover 'Law school and professional responsibility: the impact of legal education on public interest practice' *Judicature* Vol 66 No 5 November 1982, 194.

Appendices

A

List of submissions to discussion paper

Mr R Cornall, Managing Director, Victoria Legal Aid (submission received with the National Legal Aid submission)

Federal Court of Australia

Freehill Hollingdale and Page, Solicitors

Law Society of New South Wales Pro Bono Scheme

Intellectual Disability Rights Service, Inc

Mr P Jeffares

Mr Philip King, Chair of the 1992 Law Society Pro Bono Task Force and a Councillor of the Law Society of New South Wales

Mr R J Mitchell, President, Blue Mountains Law Society

National Legal Aid

The New South Wales Bar Association

Mr I Pike, (then) Chief Magistrate of the Local Courts

Public Interest Law Clearing House, Inc

Public Interest Law Clearing House (Vic), Inc

B

Consultations

The Centre consulted the following people in the course of the project:

Legal aid bodies

Mr Michael Cramsie, Managing Director, Legal Aid NSW

Legal centres

Ms Susan Davitt, Principal Solicitor, Redfern Legal Centre

Ms Frances Gibson, Principal Solicitor, Kingsford Legal Centre

Ms Jennifer Giles, Principal Solicitor, Women's Legal Centre

Private firms of solicitors

Mr Chris Greiner, Blake Dawson Waldron, Solicitors

Ms Kate Harrison, Gilbert and Tobin, Solicitors

Mr David Hillard, Clayton Utz, Solicitors

Mr Colin Loveday, Clayton Utz, Solicitors

Mr Scott Roulston, Keddies, Solicitors

Organisations coordinating pro bono services

Ms Andrea Durbach, (then) Coordinator, Public Interest Law Clearing House, Inc.

Ms Caitlin English, Manager, Public Interest Law Clearing House (Vic), Inc.

Ms Susan Harben, (then) Manager, Community Assistance Department, Law Society of NSW

Ms Heather Sare, Manager, Legal Assistance Scheme, NSW Bar Association

Mr Steven Saunders, (then) Manager, Community Assistance Department, Law Society of NSW

Ms Nancy Walker, Pro Bono Solicitor, Law Society of NSW

C

Project Advisory Panel

Legal Aid (NSW)

Mr Michael Cramsie, Managing Director, Legal Aid NSW

Mr Terry Murphy (alternate to Mr Cramsie), Manager of Legal Services, Legal Aid NSW

Community legal centres

Ms Sue Davitt, Principal Solicitor, Redfern Legal Centre

Welfare groups

Mr Robert Drake, (then) Deputy Director, New South Wales Council of Social Services

Organisations which coordinate pro bono legal services

Ms Andrea Durbach, (then) Coordinator, Public Interest Law Clearing House, Inc

Ms Sue Harben, (then) Manager, Community Assistance Department, Law Society of New South Wales

Ms Heather Sane, Pro Bono Manager, NSW Bar Association

Lawyers who provide pro bono services

Mr Adam Darke, Adam Darke and Co, Solicitors

Mr Andrew Lumsden, Corrs Chambers Westgarth, Solicitors

Mr Anthony McQuillen, Barrister

D

Copy of questionnaires sent to the institutional schemes

Legal Process Research Centre

Future directions for pro bono legal services in New South Wales

Questionnaire

Name of scheme

What is the purpose of the scheme (i.e. its aims and objectives)?

Please give a brief description of how the scheme operates

1. The scheme's organisation

Does the scheme operate as an independent organisation or as part of another body? Please give details.

What is the scheme's management structure?

How many staff work in the scheme and what are their duties?

How much funding, if any, did the scheme receive in 1995/96 and what was its source?

Does the scheme receive any in-kind support (such as seconded staff or free office accommodation)? Please give details.

2. The assistance available under the scheme

What types of assistance are available through the scheme (e.g. litigious, non-litigious work, in-kind, non-legal)?

Must assistance under the scheme be provided to clients free or may participating lawyers seek some remuneration (e.g. on a reduced fee or speculative/contingency basis)?

Does the scheme provide disbursement assistance? If yes, please give details of the eligibility criteria, maximum amount available in each case and the source of the funds.

How many grants were made under the disbursement scheme in 1995/96?

Does the scheme provide any other assistance to participating lawyers? If yes, please give details.

3. The service providers under the scheme

What guidelines, if any, must be satisfied by firms or individual lawyers wishing to participate in the scheme?

How many lawyers were participating in the scheme as at 30 June 1996?

Please give details of the types of lawyers who participate in the scheme (e.g. areas of expertise, years of experience, city/suburban/regional)?

How often is the list of participating lawyers updated?

Do non-lawyers participate in the scheme (e.g. accountants, mediators)? If yes, please give details.

4. The clients

What criteria must clients satisfy to be eligible for assistance under the scheme (e.g. means test, merits test, type of matter, type of client)?

How many applications for assistance did the scheme receive in 1995/96?

Of these applications, how many sought assistance in relation to

- civil claims
- criminal
- family
- commercial
- probate
- industrial
- non-litigious work
- other

Please provide a short description of how applications are assessed.

What is the average time for processing an application to the scheme?

How many of the applications made in 1995/96 were successful?

How many of the applications made in 1995/96 were unsuccessful?

Of the unsuccessful applications, how many failed because

- the client was not eligible?
- the scheme was unable to find a lawyer willing or able to provide the assistance sought?
- the client withdrew?
- other reasons?

What assistance, if any, is provided to unsuccessful applicants (e.g. referral to another agency)?

5. Promoting the scheme

How do clients know about the scheme?

What are the main sources of referral to the scheme and how many clients were referred from each of these sources in 1995/96?

How does the scheme encourage lawyers to participate?

How does scheme advertise or promote its services to

- the profession?
- the public?
- legal centres, legal aid commissions and other referral sources?

Does the scheme produce any publications or reports? If yes, please provide copies.

6. Quality controls

How does the scheme ensure that a lawyer has the appropriate skills and experience to assist the client referred to him or her?

What mechanisms does the scheme use to obtain feedback from clients and participating lawyers on the appropriateness of referral and any other matters?

What mechanisms does the scheme use to ensure that participating lawyers provide assistance in accordance with scheme guidelines?

THANK YOU FOR ASSISTANCE.

E

Interview Schedules

Interview Schedule for Practitioners

Background

1. Could you describe the ways that your firm provides pro bono legal services.
2. From what sources does the firm receive requests to act in matters pro bono?
3. What are the guidelines that the firm applies in deciding whether or not to act in a particular matter? Does the firm have written guidelines?

Management of pro bono work

4. How is pro bono work organised within the firm?
5. Why did the firm choose to organise its work in this way?
6. In your experience, what factors encourage solicitors within the firm to take on pro bono matters?
7. One of the questions we have raised in the discussion paper is that of pro bono work being given equal priority within a firm, even where there is pressure of work from paying clients. How does your firm deal with this situation?
8. Do you have a system for monitoring pro bono work within the firm?

Coordination

9. Are you in contact with other organisations or individuals who provide or organise referrals to pro bono legal assistance?
10. What do you use these contacts for?
11. In your view, is there any duplication of pro bono services amongst service providers? Are there any gaps?

General comments

12. What do you think are the positive features about the way pro bono services are currently organised and delivered?
13. What do you think are the negative features about the way pro bono services are currently organised and delivered?
14. Is there any support or assistance that your firm would benefit from in relation to pro bono services?
15. Looking at the management models presented in the Discussion Paper, do you have any views about which ones would be most helpful to you?
16. Do you have any other comments on the way that pro bono legal services are organised in New South Wales?

Interview schedule for representatives of pro bono and legal assistance schemes

Recruitment of practitioners

1. In your experience, what motivates a practitioner to agree to provide services as part of the pro bono scheme?

2. How do you go about locating individual practitioners who will accept referrals on a pro bono basis?

3. Do you feel that your efforts to recruit support from practitioners have been successful? If so, to what do you attribute this?

4. (a) In your view, would your organisation benefit from support in recruiting pro bono practitioners.

   (b) If so, what sort of support would be useful (for example, advice on how to run "recruitment campaigns", printed material for mail outs, lists of names to contact).

   (c) Could you rank these different types of support in order of usefulness to you?

Case support

5. (a) When your organisation refers a matter to a private practitioner to be handled for no fee or a reduced fee, does it provide the practitioner with support or technical assistance in handling the case (for example, precedents to use, contacts for specialist advice)?

   (b) If not, why not?

6. Do you believe the practitioners who accept referrals find such support useful (or do you believe they would find it useful if it was provided)? Does it (Would it) affect their willingness to accept referrals?

7. (a) Would you like to be able to provide additional support or assistance to practitioners who accept referrals?

   (b) What sort of additional support or technical assistance would you like to be able to provide?

   (c) Why are you unable to provide this assistance at present? (Lack of resources, lack of expertise?)

Coordination

8. Are you in contact with other organisations who provide, or organise referrals to, pro bono legal assistance?

9. What do you use these contacts for? (To refer cases which the organisation can't handle, to share information, to discuss operational matters?)

10. Are there any formal liaison arrangements in place between your organisation and these other schemes?

11. (a) Do you believe the existing liaison arrangements you have with other schemes work well?

    (b) Are there ways that these arrangements could be improved?

12. In your view, is there any duplication of pro bono services amongst service providers? Are there any gaps?

General comments

13. Is there any other support or assistance that your organisation would benefit from in relation to pro bono legal services?

14. What do you think are the positive features about the way pro bono services are currently organised and delivered?

15. What do you think are the negative features about the way pro bono services are currently organised and delivered?

16. Do you have any other comments on the way that pro bono legal services are organised in NSW?

F

Discussion paper

Discussion paper: Future directions for pro bono legal services in New South Wales Issues for comment

Ql. The Centre invites comments on whether pro bono work should be limited to work which involves the exercise of professional legal skills.

Q2. The Centre considers that pro bono services should be targeted at:

- people who can demonstrate a need for legal assistance but cannot afford the full cost of a lawyer's services at the market rate
- non-profit organisations which work on behalf of members of the community who are disadvantaged or marginalised, or which work for the public good
- matters of broad community concern which would not otherwise be pursued.

This definition would exclude work which is done without charge for persons able to pay, where the work is motivated, for example by friendship, social courtesy or business development.

The Centre invites comments on whether pro bono services should be targeted in this way.

Q3. The Centre invites comments on the extent to which fee paying work should be regarded as pro bono work for the purposes of pro bono schemes. In particular, should work taken on on a speculative fee basis be regarded as pro bono work?

Q4. The Centre invites comments on how to ensure that pro bono legal services are not used to replace publicly funded services.

Q5. The Centre invites comments on ways of ensuring that pro bono legal services are of the same quality as those provided to paying clients.

Q6. The Centre invites comments on the following issues:

- is the provision of training and case support to practitioners an objective that should be pursued by pro bono schemes?
- what type of assistance would be useful to practitioners or would make participation in pro bono schemes more attractive to practitioners?
- how can this assistance be most effectively provided?
- are there other ways to support and encourage the provision of pro bono legal services?

Q7. The Centre invites comments on the most effective mechanisms that can be established to enable pro bono services to support courts and tribunals.

Q8. The Centre invites comments on these models and on their possible application to New South Wales. The Centre also invites comments on any other models that should be considered.

Q9. The Centre invites comments on how pro bono legal services and their coordination should be resourced.

G

Survey of Law Deans

The Legal Process Research Centre (LPRC) is an independent, non-profit research centre established by the Law Foundation of New South Wales to improve the accessibility, effectiveness and affordability of legal services and remedies. The Centre's goal is to conduct projects which result in the implementation of reforms or the adoption of products that make the delivery of particular legal services and remedies cheaper, simpler and more efficient.

The LPRC has been asked by the Law Foundation Board of Governors to inquire into and report on future directions for the delivery of pro bono legal services in New South Wales. The purpose of the research is to examine the current approach to pro bono legal services in the State and to consider what changes, if any, should be introduced to improve the delivery of those services.

As part of the research for this project, the Centre would like to know whether Law Schools are currently offering any courses which discuss pro bono legal work. We would therefore be very grateful if you would take the time to answer the following questions. Alternatively, please provide contact details of the staff member who would best be able to provide this information.

1. Do any of the courses offered by your Law School contain a component on pro bono legal services or discuss a lawyer's professional responsibility to assist the disadvantaged or those who cannot afford legal services?

2. If so:

    (a) what are these courses?

    (b) are these courses compulsory?

    (c) if the courses are not compulsory, what percentage of students undertook the courses in 1996?

3. Does your Law School undertake any other activities aimed at developing a "pro bono culture" amongst law students? If so, could you please provide details?

4. Would you like to make any other comments relating to this project?

As this project is due to be completed by 8 November, I would be grateful if you could reply by 18 October. Would you please send your reply to the following email address: gillian@fl.asn.au. If you have any questions about this project, I can be contacted on (02) 9221 3355.

Thank you very much for your assistance.

Gillian McAllister

Senior Researcher

H

Law Schools who responded to the survey

University of New South Wales

University of Wollongong

University of Adelaide

Latrobe University

University of Technology, Sydney

Monash University

University of Sydney

Australian National University

University of Western Sydney, Macarthur

I

Work undertaken in the course of the project

The Stage 1 research was conducted over a four month period, beginning in mid-July 1996.

Activity	Participants	Timing (1996)
Meetings conducted to discuss project outline and terms of reference	Dan Gilbert and Andrea Durbach (PILCH)	15 July
Terms of reference finalised	Law Foundation and the above	16 July
Letters of invitation mailed re. Project Advisory Panel. Response requested by 31 July 1996.	Combined Community Legal Centres Group (NSW), Legal Aid NSW, NCOSS, NSW Bar Association, Law Society of NSW	16 July
Terms of reference and project outline distributed	All Australian pro bono schemes and interested organisations and individuals	19 July
Questionnaire "Future Directions for Pro Bono Legal Services in New South Wales" mailed to key interest groups.	The Law Society of NSW Pro Bono Scheme, The NSW Bar Association Legal Assistance Scheme, PILCH (NSW) plus PILCH (Vic) and the Law Society of WA.	19 July
Literature search commenced and was on-going		29 July
Members of Project Advisory Panel (PAP) confirmed.	Michael Cramsie (Legal Aid NSW), Robert Drake (NCOSS), Andrea Durbach (PILCH), Susan Harben (Law Society) and Susan Davitt (Combined Community Legal Centres Group)	6 August
Solicitor representatives on PAP confirmed	Andrea Lumsden and Adam Darke	9 August
Bar Association nominees for PAP received	Heather Sare and Anthony McQuillen	12 August
Response to questionnaire received	PILCH (Vic)	14 August
Response to questionnaire received	NSW Law Society	15 August
Response to questionnaire received	NSW Bar Association	21 August
Background papers distributed for PAP meeting	Refer Appendix C	22 August

Activity	Participants	Timing (1996)
PAP meeting conducted for the purpose of informing the Panel of the work done to date and seeking comment on the research proposed to be undertaken		26 August
Commenced drafting discussion paper		27 August
Response to questionnaire received	PILCH	3 Sept
Four face-to-face interviews were conducted with pro bono coordinators and community legal centre representative to provide information for Discussion Paper	Susan Harben (Law Society of NSW), Heather Sare (NSW Bar Association), Andrea Durbach (PILCH) and Susan Davitt (Redfern Legal Centre).	4-10 Sept
Discussion paper distributed to 101 key organisations and individuals. Deadline for responses 18 October		20 Sept
One-to-one face-to-face interviews were conducted with individuals from five organisations involved in the delivery of pro bono legal services	Michael Cramsie (Legal Aid NSW), Chris Greiner (Blake Dawson Waldron), Kate Harrison (Gilbert & Tobin), Colin Loveday (Clayton Utz) and Scott Roulston (Keddies).	8-25 Oct
Nine written responses to the Discussion paper received by the deadline	Refer to Appendix A	18 Oct
Written response to the Discussion Paper received	PILCH	22 Oct
Two telephone interviews were conducted concerning responses to the Discussion Paper	Jennifer Giles (Women's Legal Centre) and Frances Gibson (Kingsford Legal Centre)	22 Oct 30 Oct
Draft recommendations sent to all PAP members for discussion at meeting of Panel	See Appendix C	25 Oct
Written responses to the Discussion Paper received	Law Society and Bar Association	25 Oct
Meeting of PAP to discuss draft recommendations	Refer Appendix C	28 Oct
Preparation of preliminary report		29 Oct - 15 Nov

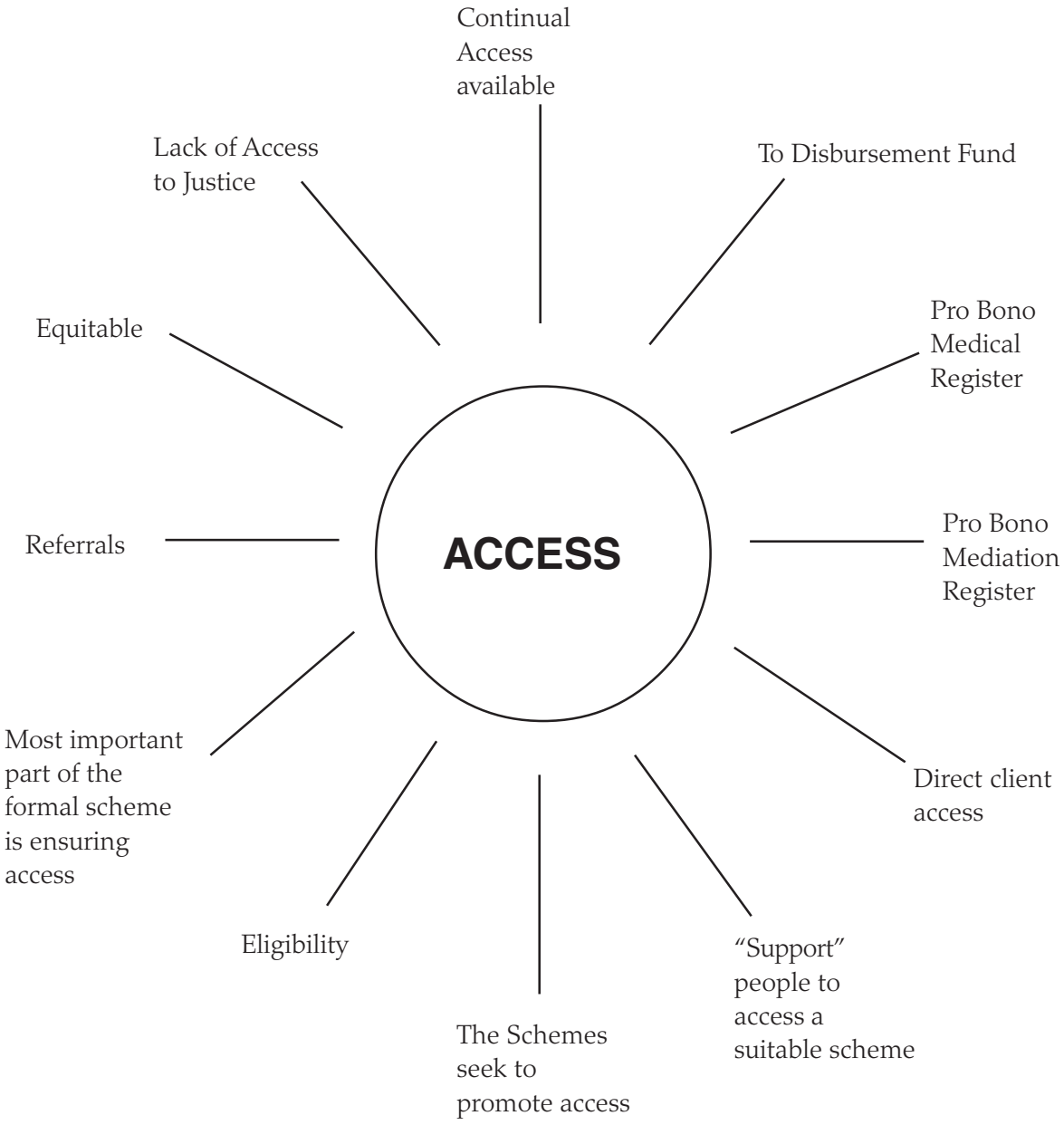
Stage 2 of the research was commenced in February 1997. This included re-reading of the preliminary report, reanalysis of the data, reflection, and writing of the final report.

The Centre for Legal Process ceased operating as a fully operational project of the Law Foundation in June 1997, writing continued on a part-time basis until the project concluded in April 1998.

The final report was made public on 25 May 1998.

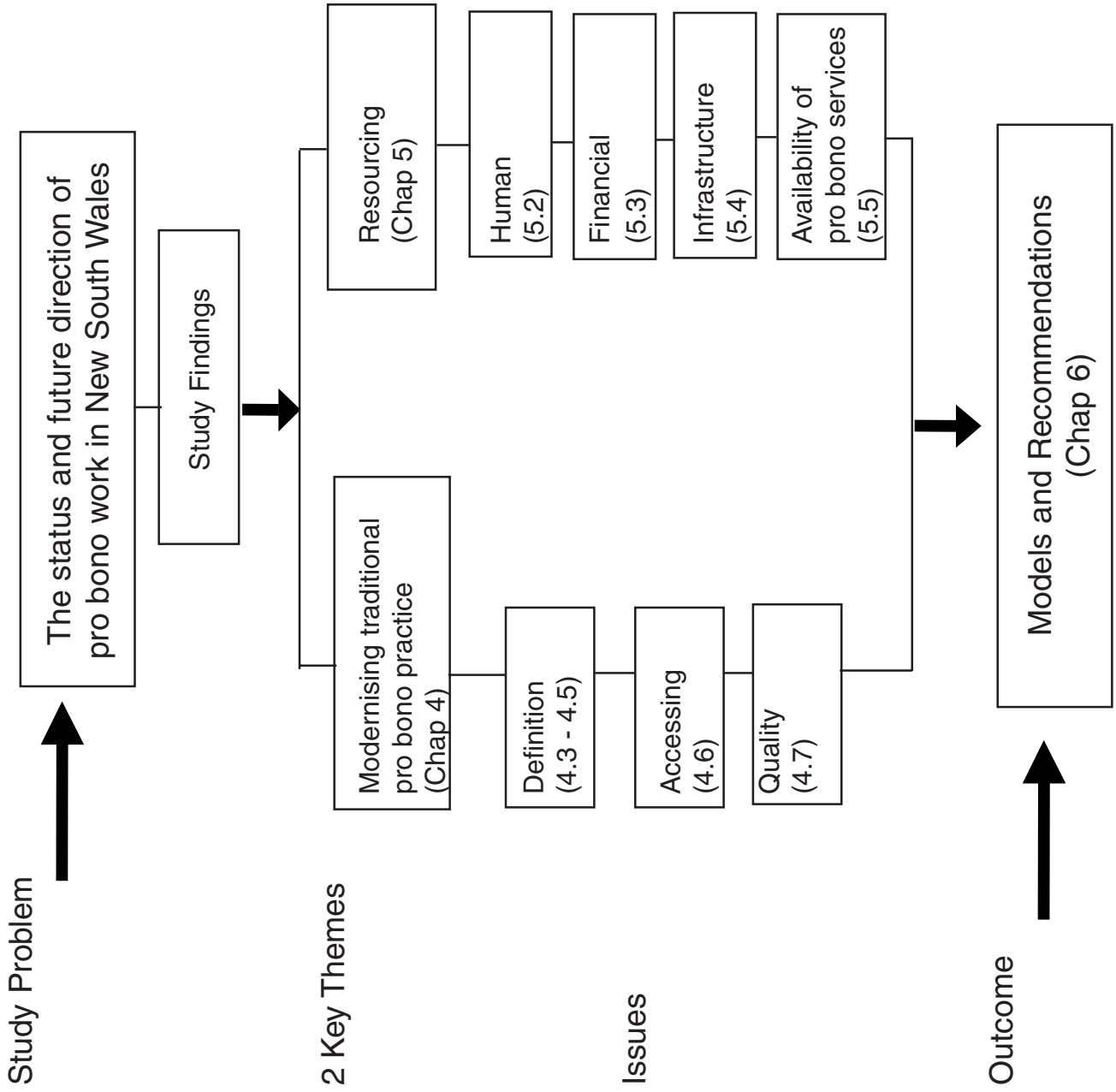
J

Example of a map developed in axial coding for the theme of 'Access'



K

Key themes and issues arising from the research



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Supplementary Report

Proposed Models

Supplementary Report

Proposed Models

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1

Introduction

1.1. Background

This paper develops the proposals canvassed in chapter 6 of the research report by the Law Foundation's Centre for Legal Process 'Future directions for pro bono legal services in New South Wales'.[1]

The terms of reference for the research project had required an assessment of the need for greater coordination of pro bono services in New South Wales, and a proposal to improve the structure, organisation and delivery of pro bono services. The research identified several areas where greater coordination between the pro bono *referral services* in NSW would reduce administrative gaps and duplication, and improve efficiency in their operation; chapter 6 identified four possible models for the way in which those referral services might be best managed

While the models ostensibly co-ordinate the referral schemes, the models are proposed as means for the better management of pro bono generally in NSW.

The proposed organisational models are:

Model A - a central contact point

Model B - a central clearing house

Model C - a support agency

Model D - an advisory committee

This supplementary report provides a more detailed account of the four models, to facilitate discussion as to which, if any, should be developed further and adopted.

1.2. Research method

The models are designed by way of analogy with existing comparable models in other sectors. The models have been developed specifically to encourage debate, quite independently of views that the existing referral agencies may already have about ideal or preferred models.

A close study of 'arms length' examples provides a better basis for debate than the development of models that attempt, in their formulation, to accommodate diverse views among the existing referral agencies. A model that is agreed on and adopted after discussion will be owned by the participants in that discussion: this report provides a basis for that discussion.

[1] Centre for Legal Process (1998) *Future Directions for Pro Bono Legal Services in New South Wales*. Sydney: Law Foundation of New South Wales.

In researching comparable organisations, publications such as annual reports and newsletters were examined; representatives of some organisations were interviewed to obtain further details about the organisation. The interviews covered issues such as:

- history of the organisation
- resource requirements, including staffing and infrastructure
- funding sources
- perceived advantages and disadvantages of the organisation's structure
- improvements that could be made to the organisation's structure.

An interview schedule was designed to ensure that the interviews were conducted in a standardised way, but was varied where necessary to accommodate differences among organisations.

In appendix A, page 154, is a list of the organisations reviewed, and the names and positions of the representatives interviewed; in appendix B, page 155, is the basic interview schedule.

The experiences of these organisations were analysed for their applicability to the proposed models. From this analysis, conclusions have been drawn about the resources necessary to operate each model, and about the key issues to be considered in establishing each model.

This paper examines each model in turn. In each case, this examination is set out as follows:

- a *description* of the model
- a *structure* for the model
- the *comparators* used to develop that model
- key *implementation* points arising from the use of comparators.

2

Model A - a central contact point

Distinguishing feature

A central coordinating agency for pro bono legal services

Characteristics

Referrals

- the existing pro bono schemes will continue to operate independently
- the agency will be promoted as the first point of contact for those seeking pro bono assistance
- the agency will advise inquirers of the most appropriate avenue of assistance, and will direct inquirers to the most appropriate scheme
- the agency will not provide legal services or screen cases in detail

Operations

- the agency will employ staff to take telephone inquiries
- the agency could extend its resources by involving university students or other volunteers
- the agency will use technology to maintain and provide up-to-date information

Support activities

The agency will:

- develop information materials, and will promote pro bono services to referring organisations
- develop pro bono networks within the legal profession, and will create registers of non-legal experts willing to work on a pro bono basis
- operate as a policy making body in the area of pro bono legal services, in consultation with practitioners and organisations who provide pro bono legal services
- collect and disseminate information about pro bono services
- develop recruitment and training strategies for use by pro bono schemes
- liaise with Law Schools to develop a role for students within pro bono services
- identify and negotiate avenues of disbursements assistance, such as waiver of court fees.

2.1. Structure for Model A

The proposed structure for Model A is based on an analysis of two comparators:

- the Council on the Ageing (NSW) Inc (COTA)
- the NSW Community Legal Centres' Secretariat Inc (CLC Secretariat).

Vision

Improved access to justice through the promotion and support of pro bono legal services.

Mission

To make pro bono legal work by lawyers easier, more efficient and more effective by:

- providing a central information point about the availability of pro bono services
- providing assistance with the implementation of "best practice" policies and procedures
- developing practical ways to assist legal practitioners to conduct pro bono cases
- identifying ways of engaging more lawyers in pro bono legal work
- fostering the exchange of information between service providers
- collecting information about the provision and value of pro bono legal services.

Strategies

Establish a public information service

- Employ a project worker to establish a database of pro bono service providers.
- Develop a promotional strategy for the service.

Develop mechanisms to support the delivery of pro bono legal services

- Assess the support needs of pro bono practitioners through meetings with stakeholders followed by a conference or forum of pro bono service providers.
- Commission a survey of all legal practitioners to explore their attitudes towards conducting pro bono cases and ways in which they could be encouraged to accept more pro bono work.
- Prioritise the support needs of pro bono practitioners and settle a list of tasks for the organisation to work on. Establish working groups to advise on each of these tasks.
- Develop a database of information relating to policies and procedures for conducting pro bono cases, establishing pro bono schemes and organising pro bono work within firms.

Develop a strong pro bono culture

- Develop links with professional bodies, regional law societies, firms which have pro bono programs, law schools and other relevant stakeholders.

- Establish networks and other opportunities for the exchange of information between pro bono service providers.

Promote the organisation and pro bono legal services

- Develop a promotional strategy for the organisation, including the publication of a regular newsletter.
- Establish a system for the regular collection, analysis and publication of information about the provision and value of pro bono legal services.

Constitution

The central contact point would be established as an independent organisation. It would be sufficient if the structure adopted were that of an incorporated association.

Management

The organisation will be managed by the committee of the incorporated association (the Board). The Board would comprise 6-8 people, drawn from the different groups involved in the association. Board members are therefore likely to be representative of existing pro bono programs, pro bono practitioners, Legal Aid NSW, community legal centres, community welfare organisations and university law schools.

Staff

- Director (full-time)

  The Director will:

  - be responsible for the day-to-day management of the support agency
  - will report to the Board
  - will focus initially on:
    - promoting the support agency,
    - overseeing the development of the referral database,
    - developing links across the sector and
    - establishing the initial set of tasks that the agency will work on.
  - will be responsible for:
    - monitoring the agency's operations
    - establishing processes for regular consultations with pro bono service providers
    - facilitating networking within the sector and
    - initiating research where necessary.

  Salary: $65,000

- Information Officer (full-time)

  The Information Officer will:

  - respond to calls for information about pro bono legal services.
  - maintain the referral database,
  - monitor the level of calls and the principal areas of inquiry, and

- provide regular reports to the board on the operation of the information service.

Salary: $38,000

- Project Officer (2 days per week)

  The Project Officer will:

  - be responsible for establishing and maintaining the database of information on "best practice" within the pro bono sector
  - support the working groups
  - carry out research and write background papers
  - assist with the publication of the agency's newsletter and information brochures
  - assist with the convening of conferences and forums.

  Salary level: $16,000 (based on a full-time salary of $40,000)

- Administrative Assistant (full-time)

  The Administrative Assistant will carry out general administrative duties and support the Director.

  Salary: $28,000

Other costs

Estimate of operating costs

Cost item	Estimated cost ($)
Accommodation (rent & outgoings on 100 sq m @$300 per sq m)	30,000
Books, subscriptions and memberships	1,000
Contractors (eg for computer maintenance)	2,000
Furniture & office equipment	1,000
Insurance	2,000
Postage and telephone	7,000
Printing & stationery	4,000
Promotion (including the information service)	20,000
Publications production (manuals, newsletter and research reports)	10,000
Staff on costs	16,000
Travel	1,000
Total	94,000

Estimate of establishment costs

Cost item	Estimated cost ($)
Establishment of database	20,000
Computer equipment (4 users)	12,500
Office furniture (5 work spaces)	12,000
Fax machine	1,000
Photocopier	10,000
Printer	4,000
Telephone system	12,000
Total	71,500

Budget

Using the above estimates, the support agency will require an annual budget of $241,000. In addition, establishment costs of $71,500 will be incurred in setting up the agency. Additional funds will be required to commission major research projects as they occur. Prospective funding sources are discussed below at part 6, page 150.

Table of comparators for Model A

	COTA	**CLCs Secretariat**
Objectives	To promote and protect the well-being, rights and interests of all older people in New South Wales, irrespective of their socio-economic, ethnic or religious background, in order to maximise the individual's fullest involvement in and contribution to society.	To make the work of community legal centres (CLCs) easier, more efficient and more effective, through opening and maintaining good information flows and supporting a broad range of CLC activities. This work prevents the unnecessary duplication of effort across Centres, and ensures a cooperative approach by CLCs in areas of common interest from policy work to the securing of financial support.
Activities	· service provision to individual older people · policy work · working with groups and organisations that provide services to older people	· supporting the Combined Community Legal Centres Group, the network of CLCs throughout New South Wales · supporting member CLCs · information and referral · funding program activities
Management structure	· based on the principle that the organisation should be run by older people · structured so that members elected by individual older people, as opposed to those elected by service providers or older people's organisations, have the greatest number of votes on the Board. · day-to-day operation the responsibility of the Executive Director	· The work of the Secretariat is overseen by a Management Committee elected from the members · The Committee meets monthly and reports to the monthly meetings of the Combined Community Legal Centres Group
Staffing	· 20 staff; policy officers, SIS information officers, administrative staff · extensive assistance from volunteers in marketing, databases, library work and events	· Project and Policy Officer · Funding Program Worker · Information Officer and Administrator
Budget	· annual budget of approximately $1 million · SIS accounts for around $300,000 · funding from State and Federal Governments grants programs · revenue from membership fees, donations, publication sales and insurance commissions	· annual budget $173,000 · Funding comes principally from the Legal Aid Commission

2.2. Comparators for Model A

The Council on the Ageing (NSW) Inc

Objectives

The Mission of the Council on the Ageing (NSW) Inc (COTA) is:

> *To promote and protect the well-being, rights and interests of all older people in New South Wales, irrespective of their socio-economic, ethnic or religious background, in order to maximise the individual's fullest involvement in and contribution to society."*

COTA (NSW) is part of a network of COTAs across Australia.

Activities

The activities of COTA are:

1. service provision to individual older people.

   Seniors Information Service (SIS), a telephone service that provides information and referrals on all aspects of ageing. In 1996/97, SIS dealt with 25,542 calls.

   COTA is planning to establish an Internet site to provide the basic information that is the subject of many of the calls to SIS. This will reduce the number of short calls that SIS currently receives.

   As a spin-off from SIS, COTA has already established a free, professional counselling service. Early experience showed that SIS was receiving many lengthy calls that required individual counselling rather than information, and these needed to be dealt with in a more appropriate way.

2. policy work

   - representing older people's needs to government and other organisations.
   - working to establish issues of importance to older people on the political agenda
   - preparing submissions on aged care issues
   - representation on government bodies
   - general research and data collection.

   COTA's policy work is assisted by a Policy Advisory Committee which comprises 12 members drawn from the membership of COTA. Its members include older people and service providers. The Committee provides advice to the Executive Director, who develops recommendations for the Board of COTA.

3. working with groups and organisations that provide services to older people.

   COTA

   - supports and encourages seniors' clubs by providing assistance on a range of issues, including management issues and membership activities.
   - publishes a newsletter for seniors' clubs and centres
   - provides secretariat support for the Forum of Seniors Organisations, a meeting of 16 of the State's major seniors organisations.

Management structure

COTA's management structure is

- based on the principle that the organisation should be run by older people
- structured so that members elected by individual older people, as opposed to those elected by service providers or older people's organisations, have the greatest number of votes on the Board.

The Board has the capacity to set up sub-committees.

The day-to-day operation of COTA is the responsibility of the Executive Director.

Staffing

There are some 20 staff employed by COTA: policy officers, information officers attached to SIS, and administrative staff.

COTA receives extensive assistance from volunteers involved in the marketing of products, updating data bases, library work and events coordination.

Board members act on a voluntary basis, while other volunteers are.

In 1996/97, 121 volunteers worked an estimated 6,730 hours. COTA estimated the value of this support as $122,500.

Budget

- annual budget of approximately $1 million.
- SIS accounts for around $300,000 of this amount.
- COTA receives funding from State and Federal Governments under specific grants programs.
- COTA derives revenue from membership fees, donations, publication sales and insurance commissions.

NSW Community Legal Centres' Secretariat Inc

Objectives

The aim of the Secretariat is to make the work of community legal centres (CLCs) easier, more efficient and more effective, through opening and maintaining good information flows and supporting a broad range of CLC activities. This work prevents the unnecessary duplication of effort across Centres, and ensures a cooperative approach by CLCs in areas of common interest from policy work to the securing of financial support.

Activities

The main activities of the Secretariat are:

1. supporting the Combined Community Legal Centres Group, the network of CLCs throughout New South Wales.

   The Secretariat

   - organises and services meetings of the Combined Community Legal Centres Group and its committees.

- assists the Group in policy development such as those in relation to legal aid funding, CLC funding, the provision of courts in regional areas and legal services for women, children and young people
- has coordinated a strategic planning process for the Group.

2. Supporting Member CLCs

The Secretariat provides

- information and advice to individual centres on administrative and funding issues.
- intensive support to new centres to help them become operational as soon as possible.

3. Information and Referral

The Secretariat

- operates as an information clearing house for CLCs,
- responds to inquiries about legal assistance from members of the public
- developed an information and referral database in conjunction with the Legal Aid Commission

4. Funding Program Activities

One of the Secretariat's key functions is to facilitate a coordinated approach by CLCs to funders such as the Legal Aid Commission and the Community Legal Centres Funding Program.

Management structure

- The work of the Secretariat is overseen by a Management Committee elected from the members.
- The Committee meets monthly and reports to the monthly meetings of the Combined Community Legal Centres Group.

Staffing

The Secretariat receives funding for three full-time positions:

- Project and Policy Officer
- Funding Program Worker
- Information Officer and Administrator

Budget

The Secretariat's budget for the current year is $173,000. Funding comes principally from the Legal Aid Commission.

2.3. Key indications from comparators for Model A

Establishing a telephone referral service

A feature of Model A is the operation of a telephone information service: the COTA Seniors Information Service (SIS), and the CLCs' Secretariat referral database, provide a useful guide.

Establishing the SIS system

- commenced operation in 1996
- establishment costs $35,000
- the major items of expenditure: a new telephone system and computer hardware
- already owned the necessary software
- already had established a referral database.

Operating the SIS system

- five full-time staff
- additional support was provided by volunteers
- in 1996/97 SIS dealt with 25,542 calls
- SIS pays for the capacity to switch callers to other services where that is necessary.

Establishing the Secretariat system

- establishment costs $35,000 for a project worker and overheads
- six months to set up.

Operating the Secretariat system

- runs on FileMaker Pro
- can be maintained by Secretariat staff.

Establishing a pro bono referral system

The total number of applications or inquiries received by the three institutional pro bono schemes in 1996/97 was 1,283. The potential level of demand is much higher, with 13,768 applications for assistance having been refused by Legal Aid NSW in 1995/96.

Based on the staffing level of SIS, one full-time staff member would be able to deal with 4,000 to 5,000 calls per year. This would be sufficient to operate the information arm of Model A in its first year.

It will be necessary to review the volume of calls and the staffing of the service each year. It may be possible for volunteers, such as students, to provide assistance with the information service.

Establishment costs for the service are likely to include:

- costs for a project worker to establish the database
- purchase of database software (for example, FileMaker Pro)
- purchase of computer hardware

- purchase of an appropriate telephone system.

Planning and promotion

- A sound strategic plan is necessary
- It is important to be clear about objectives and priorities
- It is important not to undertake activities that are outside those objectives or beyond resources.
- Role as a facilitator of networking among service providers should be planned and adequately supported.
- Effective networking not happen without resources.
- A good public profile is necessary.
- The person who leads the organisation needs:
  - appropriate skills
  - to be well-known in the sector
  - a thorough knowledge of the issues.
- Promotion of the organisation and the information service needs to be adequately resourced and undertaken on a professional basis.

Process

The organisation will

- be consultative in its decision making
- have no power to compel pro bono service providers to adopt particular procedures or standards
- take a 'bottom up' approach to standard setting, to develop procedures and systems are from within rather than from outside.

Partnerships

- "Enterprise partnerships" can earn income, or attract sponsorship, based on the organisation's expertise in its sector. For example, COTA has developed a corporate advisory service for companies wanting to offer older employees advice on aged care issues.
- A program to recruit voluntary workers should be developed. Students are the most obvious source of volunteers for a pro bono organisation. Consideration should be given to involving legal practitioners as part of their pro bono practice.

3

Model B - a central clearing house

Distinguishing feature

A single clearing house, for all applications for pro bono assistance. This model is similar to the current operation of PILCH, except that it will cover all types of legal work rather than only public interest matters.

Characteristics

Referrals

- the existing pro bono schemes will merge into one
- the agency will be the only point of contact for those seeking pro bono assistance
- the agency will receive and assess applications for assistance and, where appropriate, refer matters to a solicitor or barrister willing to act on a pro bono basis
- the agency will not provide legal services or screen cases in detail

Operations

- the agency will employ staff to take telephone inquiries
- the agency would extend its resources by involving university students or other volunteers
- the agency will use technology to maintain and provide up-to-date information

Support activities

The agency will

- promote pro bono work within the profession and to the public
- develop pro bono networks within the legal profession, and will create registers of non-legal experts willing to work on a pro bono basis
- operate as a policy making body in the area of pro bono legal services, in consultation with practitioners
- conduct research and collect data on pro bono services
- provide training and other support to practitioners
- monitor the quality of pro bono services
- liaise with Law Schools to develop a role for students within pro bono services
- identify and negotiate avenues of disbursements assistance, such as waiver of court fees.

3.1. Structure for Model B

The proposed structure for Model B is based on an analysis of the Public Interest Law Clearing House in NSW and Victoria (PILCH) as a comparator.

Vision

Greater equality of access to legal services through a strong pro bono culture.

Mission

To provide a central agency for pro bono legal services in order to:

- improve public access to pro bono legal assistance
- maximise the resources available to pro bono work, and
- minimise gaps or duplication in the provision of pro bono services.

Strategies

Develop a strong pro bono culture

- Enlist active support for the clearing house from leaders within the legal profession and the judiciary.
- In consultation with law schools, create programs to involve law students in pro bono work.
- Establish links and liaise regularly with all areas of the legal system and law schools.

Promote pro bono legal services to the public and the legal profession

- Develop a plan for the recruitment of practitioners willing to participate in the work of the clearing house. The recruitment plan should be supported by a specific budget allocation.
- Promote the clearing house, and its eligibility criteria, to community organisations which work for the disadvantaged.
- Collate and publish information about the work of the agency and the level of pro bono work conducted by the profession.

Develop mechanisms to support the delivery of pro bono legal services

- Develop opportunities for establishing partnerships on pro bono matters.
- Establish relationships with other professional organisations, with a view to involving members of those organisations as experts in pro bono cases.
- Explore different avenues for providing disbursements assistance.

Ensure the delivery of high quality pro bono legal services

- Design systems for monitoring the quality of services delivered by the clearing house and by participating practitioners, including a complaints resolution procedure.

Establish efficient operating procedures

- Establish screening mechanisms to determine which cases will be referred to participating practitioners. Review these mechanisms regularly, in consultation with participating practitioners, to ensure their continuing endorsement of the eligibility criteria.
- Explore ways of using information technology to reduce the administrative burden on the clearing house. For example, establishment of a Web page carrying details about the clearing house's activities and eligibility criteria; use of E-mail to contact participating practitioners.
- Establish a database to collect statistics about the activities of the clearing house and the pro bono work undertaken by participating practitioners.

Constitution

The clearing house will operate as an independent, non-profit organisation, established as an incorporated association.

Management

The clearing house will be managed by the committee of the incorporated association. Committee members will represent the full range of groups involved in the organisation: 6-8 members representing groups such as:

- legal practitioners
- community welfare organisations representing potential consumers of pro bono legal services
- Legal Aid NSW
- community legal centres
- university law schools
- courts and tribunals.

Staff

- Director (full-time)

  The Director will:

  - be responsible for the day-to-day management of the clearing house
  - report to the Board
  - initially focus on effecting the transition from the existing structure for pro bono service delivery (the independent operation of different schemes) to a central clearing house system. This will involve:
    - promoting the clearing house
    - establishing a centralised database of practitioners willing to accept referrals
    - establishing eligibility criteria
    - establishing referral systems
    - developing quality control mechanisms.

- then be responsible for:
  - monitoring the clearing house's operations
  - establishing links across the legal system and with other organisations interested in the work of the clearing house
  - initiating research where necessary and
  - representing the clearing house in policy debates relevant to pro bono legal services.

Salary level: $65,000

- 2 full-time solicitors, or the equivalent number of part-time positions.

  The solicitors will

  - carry out all assessment and referral work
  - liaise between client and pro bono solicitor
  - monitor the progress of the matter.

  Salary level: $40,000-45,000

- Administrative Assistant (full-time)

  The Administrative Assistant will

  - carry out general administrative duties
  - support the Director.

  Salary level: $30,000

- Volunteers
  - Seconded solicitors
  - law students.

Other costs

Estimate of operating costs

Cost item	Estimated cost ($)
Accommodation (rent & outgoings on 100 sq m @250 per sq m)	30,000
Books, subscriptions and memberships	1,000
Contractors (eg for computer maintenance)	2,000
Furniture & office equipment	3,000
Insurance	2,000
Postage and telephone	7,000
Printing & stationery	5,000
Promotion (brochures, functions)	10,000
Publications production (manuals, newsletter and research reports)	12,000
Seminars and training (pro bono practitioners and staff)	10,000
Staff on costs	20,000
Travel	1,000
Total	103,000

Estimate of establishment costs

Cost item	Estimated cost ($)
Computer equipment (5 users)	15,000
Office furniture (6 work spaces)	14,000
Fax machine	1,000
Photocopier	10,000
Printer	4,000
Telephone system	12,000
Total	56,000

Budget

- annual budget of $283,000
- establishment costs of $56

Source of funds

PILCH (NSW) raises a large proportion of its funds through membership fees. In 1996/97, membership fees accounted for approximately $58,000 of its income of $64,000.

PILCH (Vic) raised $35,000 from membership fees.

A membership structure is therefore one possible way to finance Model B. However, it will not be sufficient on its own, and other sources of funds will be required to reach the projected operating budget of $283,000. These other sources are discussed below at part 6, page 150.

3.2. Comparators for Model B

Public Interest Law Clearing House Inc (NSW and Victoria)

Objectives

The aims of PILCH (NSW and Vic) are to

- deliver quality pro bono legal assistance to eligible organisations and individuals who require such assistance to address matters of public interest
- expand access to pro bono legal assistance and promote a pro bono culture throughout the legal profession
- to identify matters of public interest which warrant pro bono legal
- to identify the legal needs of non-profit organisations
- to match disadvantaged and under-represented individuals and groups who have a need for otherwise unavailable legal assistance with PILCH member firms
- to utilise the diverse skills and resources of law firms in a broad range of public interest matters
- to expand the participation of private practitioners in the law reform process, whether by way of litigation or policy work

- to seek the integration of pro bono work with legal practice
- to encourage cooperation between private practitioners and public interest lawyers.

Activities

1. PILCH acts as an assessment and referral agency for pro bono legal assistance. In doing so, it

- receives applications for assistance from both individuals and organisations
- refers the matter to a member having the appropriate expertise, if the eligibility criteria are satisfied
- endeavours to refer the client to an appropriate agency when the criteria are not satisfied
- facilitates the client's relationship with the member
- monitors the matter until its conclusion.

In 1996/97 PILCH (NSW) received 266 requests for assistance; during the same period, PILCH (Vic) received 432 requests for assistance.

2. PILCH supports its members. It:

- collates material
- undertakes research
- liaises between clients and members
- secures pro bono counsel
- coordinates associate members who include LEADR and a number of accounting firms
- secures other expert assistance on a pro bono basis
- applies, in New South Wales, to the Pro Bono Disbursements Fund for assistance with litigation expenses
- trains practitioners to deal with new issues, e.g. indigenous legal issues and recommended methods of communicating with Aboriginal clients.

3. PILCH undertakes policy and promotion work:

- promotion of public interest law generally through presentations at seminars and conferences, contributions to journals and newsletters and the distribution of PILCH newsletters
- policy work through participation in law reform working groups and preparation of submissions on legal policy issues.

Management structure

PILCH is managed by a Board of Directors comprising representatives of members.

The day-to-day operations are overseen by an associated agency pursuant to a paid management agreement: in NSW with PIAC and in Victoria with the Consumer Law Centre.

Staffing

The following positions in the PILCH (NSW) Secretariat are filled by PIAC

- Coordinator (part-time)
- two solicitors (part-time)
- administrative assistant (part-time).

From time to time member firms provide solicitors on secondment to PILCH for periods of 3 to 4 months.

PILCH (Vic) has two full-time staff:

- Manager, who is a solicitor, responsible for referrals, membership and promotion
- Administrative Assistant, responsible for initial inquiries, and support to the Manager and the Board.

Member firms provide seconded solicitors for 3 months at a time.

Final year law students can undertake a two week voluntary summer intern placement.

Budget

In 1996/97 PILCH (NSW) had an operational income of $64,187.

The bulk of this income derived from membership fees; approximately $5,000 was revenue from functions. Additionally, the sum of $31,680 was received from the Law Foundation to support PILCH's Stolen Generation Project.

PILCH's rent and related office costs are subsidised by PIAC with whom PILCH shares premises and staff. In 1996/97, this support was valued at $19,007.

In 1996/97 PILCH (Vic) had a budget of $149,049.

$35,635 came from membership fees and $25,000 came from the Consumer Law Centre of Victoria. A further $88,414 was received as a grant from the Victoria Law Foundation. PILCH (Vic) is seeking additional funding of $36,000 for the next financial year to allow it to employ an extra part-time solicitor.

3.3. Key indications from comparators for Model B

Resourcing and demand

The following table summarises the resources and referral work of each PILCH in 1996/97.

Operation of PILCH (NSW) and PILCH (Vic) in 1996/97

	PILCH (NSW)	PILCH (VIC)
Budget	$83,194	$149,049
Staff	Coordinator (part time) 2 solicitors (part time) Admin Assistant (part time) Seconded solicitors	Manager (full time) Admin Assistant (full time) Seconded solicitors Summer interns
Membership	32 firms 2 floors of barristers 9 individual barristers 5 associate members	23 firms Victorian Bar Council 8 associate members
Referrals	266 inquiries 86 referrals	432 inquiries 106 referrals

It is difficult to assess the likely demand for pro bono assistance if all pro bono work is centralised into one clearing house.

In 1996/97, the three institutional pro bono schemes in New South Wales received 1,283 applications for assistance. Of these, 601 were eligible and were referred to practitioners. The potential level of demand could be well over 10,000 cases: in 1995/96 Legal Aid NSW refused 13,768 applications for assistance. Many of these may have been eligible for pro bono assistance.

The combined budget for the three existing schemes in 1996/97 was $263,879. This includes membership and grant income and the value of in-kind support received from auspicing organisations. While there would be some efficiency savings in combining the activities of the three schemes, the central clearing house would be undertaking activities that the existing schemes do not all currently perform:

- the establishment of a database on pro bono work,
- implementation of measures to ensure that work performed on a pro bono basis is of a consistently high standard,
- recruitment and training of practitioners
- promotion of pro bono work.

For this reason, an annual budget of some $250,000-$300,000 would be necessary to sustain the current level of pro bono work and allow the clearing house to expand its work in the area of pro bono policy.

This amount would be reduced if in-kind support could be obtained for the clearing house. For example, if a corporation or other large organisation was willing to accommodate the scheme and provide office equipment, there would be significant savings in the cost of operating the clearing house. An example might be Westpac's support of the Australian Council of Businesswomen.

High level support

- If the central clearing house is to take a leadership role in pro bono work in the State, it will need the support and involvement of influential people within the legal profession. These need not come from within existing pro bono schemes. For example, if a clearing house was to have the active support of the Chief Justice it may be more successful in attracting members.

Co-operation

- Strategies will need to be developed to maximise cooperation and minimise competition across the profession.
- One such strategy is partnership arrangements
  - PILCH (Vic) has set up a partnership between a law school and a barrister to draft a submission to the State Government seeking a review of a piece of legislation
  - PILCH (Vic) has explored co-counsel arrangements between community legal centres and large law firms
  - Stage 3 of the Stolen Generation Project, run by PILCH (NSW), has provided opportunities to team member firms with member barristers to run cases.

Networks

- The success of a referral scheme rests in large part on the contacts and personal relationships which scheme personnel develop with pro bono practitioners, courts and non-legal experts, and throughout the justice system.
- The development of such contacts and personal links takes some time. A central clearing house should be established with an initial funding commitment of two to three years, to give it sufficient time to build its role in coordinating pro bono services.

Screening processes

- Evidence from research conducted for this pro bono project suggests that practitioners will continue to participate in a scheme if they can trust the scheme's screening system to refer suitable cases to them. A clearing house should therefore give high priority to developing effective and reliable screening processes.

Recruitment

- A clearing house should develop a recruitment plan and allocate a specific budget to support the plan. Recruitment needs to be conducted as a specific activity and not absorbed into the clearing house's general activities.

Administration

- A large part of the work of a pro bono referral scheme revolves around the administration of the scheme: screening cases and locating practitioners able to accept referrals. In establishing a clearing house, strategies need to be developed to minimise this administrative burden. For example, the clearing house's promotion scheme could focus on educating organisations likely to refer cases to the clearing house or the clearing house's eligibility criteria and procedures. This would reduce the number of inappropriate applications.

4

Model C - a support agency

Distinguishing feature

a coordinating agency that provides assistance to otherwise independent pro bono schemes and activities

This model is based on a system operating in several jurisdictions in the United States, and on the Solicitors Pro Bono Group recently established in England. For example, in Maryland the People's Pro Bono Action Centre does not provide direct services to clients, but rather supports pro bono schemes

Characteristics

Support activities

The agency will:

- collect and disseminate successful or recommended forms, policies, procedures and computer software
- schedule regular visits to pro bono practices and schemes to maintain an understanding of how they operate
- propose improvements to practices, policies and procedures
- propose innovative ways of engaging lawyers in pro bono activities
- foster the exchange of information between pro bono practices and schemes.

Operations

The agency will

- employ staff to liaise with the schemes and work on particular projects of benefit to the schemes
- use technology to maintain information on the schemes.

4.1. Structure for Model C

The proposed structure for Model C is based on an analysis of the comparators:

- Solicitors Pro Bono Group (England and Wales) (SPBG) and
- NSW Community Legal Centres' Management Support Project (MSP).

Vision

Enhanced capacity of the legal profession to provide pro bono legal services

Mission

To support the legal profession in its delivery of pro bono legal services by:

- providing research, advice and precedents for effective policies and procedures
- researching and advising on ways of engaging more lawyers in the pro bono system
- researching and developing practical ways to assist lawyers to conduct pro bono matters
- fostering the exchange of information between pro bono legal service providers
- conducting research on issues relevant to pro bono legal services.

Strategies

Develop mechanisms to support the delivery of pro bono legal services

- Assess the support needs of pro bono practitioners through meetings with stakeholders followed by a conference or forum of pro bono service providers.
- Commission a survey of all legal practitioners to explore their attitudes towards conducting pro bono cases and ways in which they could be encouraged to accept more pro bono work.
- Prioritise the support needs of pro bono practitioners and settle a list of tasks for the organisation to work on. Establish working groups to advise on each of these tasks.
- Develop a database of information relating to policies and procedures for conducting pro bono cases, establishing pro bono schemes and organising pro bono work within firms.

Develop a strong pro bono culture

- Develop links with professional bodies, regional law societies, firms which have pro bono programs, law schools and other relevant stakeholders.
- Provide opportunities for networking and exchange of information among pro bono service providers.

Promote the organisation and pro bono legal services

- Develop a promotional strategy for the organisation, including the publication of a regular newsletter.

- Establish a system for the regular collection, analysis and publication of information relating to the provision of pro bono legal services.

Constitution

The support agency will be established as an independent organisation. An appropriate structure would be that of an incorporated association.

Management

The support agency will be managed by the committee of the association (the Board). Board members should represent the full range of interests involved in the organisation. The Board is therefore likely to comprise 6-8 members representing groups such as legal practitioners, community welfare organisations, Legal Aid NSW, community legal centres and university law schools.

Staff

- Director (full-time)

  The Director will:

  - be responsible for the day-to-day management of the support agency
  - will report to the Board
  - will focus initially on:
    - promoting the support agency,
    - developing links across the sector and
    - establishing the initial set of tasks that the agency will work on.
  - will be responsible for:
    - monitoring the agency's operations
    - establishing processes for regular consultations with pro bono service providers
    - facilitating networking within the sector and
    - initiating research where necessary.

  Salary: $65,000

- Project Officer (3 days per week)

  The Project Officer will:

  - be responsible for establishing and maintaining the database of information on "best practice" within the pro bono sector
  - carry out research and writing
  - assist with the publication of the agency's newsletter and information brochures
  - assist with the convening of conferences and forums.

  Salary level: $24,000 (based on a full-time salary of $40,000)

- Administrative Assistant (full-time)

  The Administrative Assistant will carry out general administrative duties and support the Director.

  Salary: $28,000

Other costs

Estimate of operating costs

Cost item	Estimated cost ($)
Accommodation (rent & outgoing on 80 sq m @300 per sq m)	24,000
Books, subscriptions and memberships	1,000
Contractors (eg for computer maintenance)	2,000
Furniture & office equipment	1,000
Insurance	2,000
Postage and telephone	5,000
Printing & stationery	3,000
Promotion (brochures, functions)	8,000
Publications production (manuals, newsletter and research reports)	10,000
Staff on costs	12,000
Travel	1,000
Total	69,000

Estimate of establishment costs

Cost item	Estimated cost ($)
Computer equipment (3 users)	9,500
Office furniture (4 work spaces)	10,000
Fax machine	1,000
Photocopier	10,000
Printer	4,000
Telephone system	10,000
Total	44,500

Budget

Using the above estimates, the support agency will require an annual budget of $187,000. In addition, establishment costs of $44,500 would be incurred in setting up the agency.

Additional sums will be required for the commissioning of major research projects. The agency will need to obtain funding for these as they occur.

Prospective funding sources are discussed below at part 6, page 150.

Table of comparators for Model C

	SPBG	MSP
Objectives	· to provide a national focus for all pro bono work undertaken by solicitors throughout England and Wales · to support solicitors already involved in pro bono activities and to encourage other solicitors to become involved	· to provide community legal centres in New South Wales with resources to meet internal management and infrastructure needs
Activities	· support and liaison · research	· planning and evaluation · policy and resource development · training · communications technology · funding for capital equipment
Management structure	· a company limited by guarantee · a registered charity · run by a 12-member Board of Trustees, the majority of whom are solicitors · the day-to-day management is the responsibility of the Director	· overseen by the management committee of the NSW Community Legal Centres' Secretariat · guided on particular projects by working parties · carried out in consultation with individual CLCs
Staffing	· A Director · A full-time personal assistant/administrator	· Project Coordinator (4 days per week) · Financial and Administrative Systems Support Coordinator (full time) · Information Technology and Systems Support Coordinator (full time) · Training Coordinator (full time) · Events Administrator (3 days per week)
Budget	· anticipated income for 1997/98 £122,000 ($AUD 350,000) · £112,500 ($AUD 320,000) donations from law firms · £5,750 ($AUD 16,000) a research grant · £2,500 ($AUD 7,000) sponsorship from the Pro Bono Conference	· Funding is provided by the Solicitors' Trust Account Fund and administered through the Legal Aid Commission · $500,000 per year (1994/97) including funds for purchase of capital · $380,000 per year (1997/98) without capital equipment funds

4.2. Comparators for Model C

Solicitors Pro Bono Group (England and Wales)

Objectives

The principal objectives of the SPBG are:

- to provide a national focus for all pro bono work undertaken by solicitors throughout England and Wales
- to support solicitors already involved in pro bono activities and to encourage other solicitors to become involved

The Solicitors Pro Bono Group (SPBG) was formed in November 1996 following a meeting of over 50 solicitors from different parts of England and Wales. Those at the meeting were brought together by a common concern about the lack of a national framework for pro bono activity. A steering committee was elected to move the initiative forward, and in September 1997, the SPBG commenced operation.

Activities

The SPBG's main current activities revolve around publicising its role and pro bono work generally, and establishing a membership base.

The core activities of the SPBG are:

1. Support and liaison

   The SPBG liaises with those agencies already providing free legal advice services, and builds relationships between those agencies and the legal profession.

   In the longer term, the SPBG aims to establish a referral system to direct individuals or groups who need free legal advice to a solicitor who is willing to provide such assistance.

2. Research

   The SPBG will conduct a comprehensive review of pro bono activity by solicitors across England and Wales. More generally it will collect and make available information about pro bono programs, both locally and overseas.

   It is engaged in putting together practical information for the profession on issues such as costs and insurance and coordination of pro bono activity within law firms, and a directory of pro bono opportunities.

Management structure

In its establishment phase the SPBG was managed by a Steering Committee comprising some 20 members:

The SPBG is now:

- a company limited by guarantee
- a registered charity
- run by a 12-member Board of Trustees, the majority of whom are solicitors.

The Board meets every two months.

The day-to-day management of the SPBG is the responsibility of the Director.

Staffing

The salaried staff consists of the Director and a full-time personal assistant/ administrator.

The SPBG has been assisted by four volunteers on an occasional basis since its formation. The volunteers have helped in putting together a guide for firms wanting to coordinate their pro bono activity and in preparing for the Pro Bono Conference organised by the SPBG in June 1998. One volunteer has assumed responsibility for editing the SPBG newsletter.

Budget

The SPBG's anticipated income for the 1997/98 year is £122,000 ($AUD 350,000). Of this,

- £112,500 ($AUD 320,000) represents donations from 11 law firms,
- £5,750 ($AUD 16,000) was obtained as a research grant and
- £2,500 ($AUD 7,000) was provided by a bank to sponsor the Pro Bono Conference.

NSW Community Legal Centres' Management Support Project

Objectives

The Management Support Project (MSP) provides community legal centres (CLCs) in New South Wales with resources to meet internal management and infrastructure needs.

Activities

The activities of the MSP are:

1. Planning and Evaluation

   The MSP produces manuals on planning and evaluation, and subsidises facilitators to conduct planning sessions

2. Policy and Resource Development

   The MSP develops and promotes policies relating to management and employment practices

3. Training

   The MSP provides training for CLC management committees in their management functions, and a wide range of training services for CLC staff in evaluation, planning, financial management, computer skills etc

4. Communications Technology

   The MSP assisting CLCs to convert to computerised accounting systems, adopt online communications systems, maintain current and compatible computer systems etc

5. Funding for Capital Equipment

Management structure

The MSP's activities are

- overseen by the management committee of the NSW Community Legal Centres' Secretariat (see comparators for Model A above)
- guided on particular projects by working parties comprising CLC staff, convened from time to time by the MSP
- carried out in consultation with individual CLCs through a staff member at each CLC delegated to disseminate MSP information to the centre, and to consult with centre staff on MSP proposals. Delegates meet quarterly to discuss and ratify model policies, and to make decisions on other MSP activities.

Staffing

The staffing of the MSP is:

- Project Coordinator (4 days per week)

- Financial and Administrative Systems Support Coordinator (full time)
- Information Technology and Systems Support Coordinator (full-time)
- Training Coordinator (full time)
- Events Administrator (3 days per week)

Budget

$500,000 per year (1994/97), including funds for purchase of capital

$380,000 per year (1997/98) without capital equipment funds.

Funding is provided by the Solicitors' Trust Account Fund and administered through the Legal Aid Commission.

4.3. Key indications from comparators

Resourcing issues

- A variety of funding sources will be needed to support the organisation. While the SPBG has been successful in raising a significant level of funds from law firms, it sees it as necessary to create a membership base to survive long term. In its *Operational Plan 1997-98*, the MSP also noted the need to explore a wide range of funding sources, from membership levies to government funding.
- The organisation will need to have a flexible staffing structure. Given the variety of tasks that the organisation will be taking on, it will need to build a multi-disciplinary team of workers. This will mean employing a team of part-time or project-based staff.

Structure

- The SPBG is constituted as an independent charity, separate from existing professional bodies. The SPBG sees this structure as conferring important benefits, in that it is regarded as being free of any vested interests. While New South Wales is a different setting, an independent structure may allow a coordinating agency to operate more freely across the sector.
- At the same time, it is important for the organisation to maintain strong links with the professional bodies. The SPBG achieves this, in part, by having a representative of the Law Society on its Board of Trustees. It also liaises regularly with Law Society staff and officials.
- The MSP is based on a membership structure, and the SPBG is about to launch a membership drive. A membership structure carries the advantage that the organisation only has to service members, thereby containing the demands on its resources. However, it may be advisable to follow the approach of the SPBG and establish a profile for the organisation before launching a membership drive and restricting services to members. It should be noted that the SPBG is adopting a similar approach to PILCH in its membership campaign, and is targeting firms to join. The philosophy behind this is to move away from the traditional view of pro bono as being an individual, somewhat ad hoc undertaking towards a culture which accepts pro bono services as a valid part of a firm's work.

- If a membership structure is adopted, the organisation should look at ways of securing a broad range of benefits for members, to encourage them to join. For example, the organisation could arrange discounts for members on particular training courses; a regular newsletter could provide information to members on issues relevant to pro bono services.

Management

- The membership of the organisation's board of management needs to be representative of all areas of the legal profession if the organisation is to be successful in appealing to the whole profession. In addition, the board should include representatives from the Legal Aid Commission, community legal centres and community organisations. These representatives will be best able to publicise the organisation within their own sectors.

Implementation

- The organisation needs to develop mechanisms to involve members in planning the activities of the organisation. There needs to be on-going assessment of the needs of the sector and the support required.
- The organisation needs to take a very strategic approach to its efforts to introduce standards into the sector. As it will have no power to impose standards or procedures, it will need to provide incentives to members to adopt certain practices. For example, the MSP encourages CLCs to adopt certain management practices by providing resource kits and training in those issues. For any initiative, there needs to be a clear benefit to members in participating.

5

Model D – an advisory committee

Distinguishing feature

A committee of pro bono legal services providers, providing a forum for the development and implementation of a coordinated approach to the provision of pro bono services

Characteristics

Clearing house

The committee will

- be a forum for the discussion of policy issues, and for the exchange of ideas among pro bono service providers and users
- prepare and disseminate information about the pro bono referral schemes and their eligibility criteria
- collect and publish statistical data on pro bono legal services.

Co-ordination

The committee will co-ordinate

- agreement on pro bono practice standards and referral mechanisms to ensure consistent quality in service provision
- the establishment and maintenance of registers of non-legal experts

Promotion and profile

- promoting pro bono work to the legal profession.

5.1. Structure for Model D

This structure for Model D is based on an analysis of the comparators,

- Federation of Non-Government Agencies (FONGA),
- the (former) Law Society Pro Bono Committee (PBC), and
- the Legal Information Standards Council (LISC).

Vision

An efficient and effective pro bono sector.

Mission

To increase the effectiveness of pro bono legal services by providing a forum for the exchange of information and ideas among pro bono service providers.

Strategies

Establishment

- Set up an interim steering committee, comprising representatives of the existing major pro bono service providers, to establish the advisory committee.
- Through the interim steering committee, agree on
  - the proposed objectives to guide the activities of the advisory committee, such as providing a forum for communication and collaboration among pro bono service providers; developing standards for the delivery of high quality pro bono legal services.
  - the proposed membership criteria for the advisory committee: for example, membership should be open to organisations (such as schemes and law firms) that provide pro bono legal services and organisations (such as courts, community legal centres and community organisations) that refer persons for pro bono legal assistance.
  - the proposed procedures under which the committee will operate, such as the voting process required to ratify policies and standards.
- Through the interim steering committee:
  - obtain funding for secretariat support for the advisory committee.
  - invite expressions of interest in joining the committee.
  - appoint a person or organisation to provide secretariat support.
  - finalise the structure of the committee: size of the committee, working groups etc.
  - develop a program for promoting the work of the committee.

Clearinghouse

The committee will:

- collect and disseminate information about pro bono services
- operate as a policy research body in the area of pro bono legal services, in consultation with practitioners and organisations who provide pro bono legal services

Constitution

The committee would be an unincorporated body, but its decisions relating to standards for the provision of pro bono services would be binding on members. The committee would establish its own identity, and would participate in policy debates in its own name.

Management

- The committee would comprise representatives of the three pro bono referral schemes, law firms conducting their own pro bono schemes, legal aid, community legal centres, courts, and community organisations.
- The committee would be chaired by a person elected by the members.
- To function effectively, the committee would require secretariat assistance.

Staff

- Part-time policy officer

  Salary: $18,500 ($65,000 p.a. pro rata for 10 hours work per week).
- Secretariat support

  Salary/fee: $6,000 p.a. (8 hours a week @ $15 p.h.)

Other costs

The Committee will require funding for the following expenses:

Table 5.1 Estimate of operating costs

Cost item	Estimated cost ($)
Fee for use of office space and equipment	8,500
Postage and telephone	1,000
Promotion (newsletter, brochures)	3,000
Printing and stationery	1,500
Seminars and functions	2,000
Total	16,000

Budget

An annual budget of $40,500 would be required. Funding sources are discussed below at part 6, page 150.

Table of comparators for Model D

	FONGA	LISC	PBC
Objectives	· to give non-government organisations, particularly peak bodies, a unified voice that is independeent of their funding arrangements · to provide a forum for members to discuss social policy issues as they arise, and are identified by NCOSS	· to discuss and make recommendations for the coordination and provision of electronic legal information · to ensure that resources used in the delivery of online legal information are expended efficiently and effectively · to develop technical and publishing standards for electronic legal information delivery · to provide a forum for communication and collaboration amongst key based online legal publishers · to convene sub-committees for specific projects and responsibilites	· oversee the establishment of the Public Interest Law Clearing House (PILCH) and Pro Bono Referral Register · monitor the conduct of those activities · oversee the implementation of recommendations of the Pro Bono Task Force Report · report annually to the Law Society Council and recommend initiatives
Activities	· members' meetings · members follow-up action	Working groups in · accessibility issues · technical/data standards · citation standards	· receive reports from, and monitor, the operations of the Law Society's Pro Bono Scheme and Pro Bono Solicitors · organise the Law Society's annual Pro Bono Awards
Management structure	· members' meetings chaired by the host organisation · minutes taken, but meetings informal · agenda determined by the host organisation and members	· Council and working groups · Recommendations go from working groups to the Council · Meetings of the Council are chaired by the Director of the Law Foundation · Working groups are headed by a convenor	· stakeholder committee meetings, chaired by the host organisation
Staffing	· voluntary membership activity · in-kind support by the host organisation	· Voluntary membership activity · In-kind support by the host organisation	· Voluntary membership activity · In-kind support by the host organisation
Budget	In-kind support by host organisation	In-kind support by the host organisation	In-kind support by host organisation

5.2. Comparators for Model D

Federation of Non-Government Agencies

FONGA is a one of a number of regular community sector forums for information exchange, debate and collaborative action, facilitated by the Council of Social Service of New South Wales (NCOSS). FONGA was originally a forum for peak bodies, but is now attracting smaller organisations which do not have a peak body to represent them. It has over 100 members.

Objectives

FONGA's objectives are:

- to give non-government organisations, particularly peak bodies, a unified voice that is independent of their funding arrangements
- to provide a forum for members to discuss social policy issues as they arise, and are identified by NCOSS.

Activities

The activities of FONGA are

1. Members' meetings every two months: a guest speaker will make a presentation, and the meeting then deals with its normal business.

2. Members' action: at each members' meeting, an agenda for action by members is agreed, and results of the action taken are reported to subsequent meetings: e.g..

- writing submissions
- consulting to inquiries
- setting up a working party
- writing to a Minister.

Management structure

- meetings are chaired by the Director of NCOSS.
- minutes are taken at each meeting, but formal meeting procedure is not otherwise followed: meetings are conducted on an informal, round table basis.
- the agenda for each meeting is determined by NCOSS; issues are added to the agenda by members at the meeting.

Staffing

NCOSS provides all secretariat support for FONGA, and takes responsibility for the follow-up work that comes out of FONGA meetings, such as establishing working parties and writing Ministerial submissions. These tasks usually dovetail with other NCOSS policy activities.

Budget

There is no separate budget for FONGA: the secretariat work done by NCOSS is funded out of its core budget. While the costs of the secretariat cannot be specified, they include NCOSS staff time in providing support work, costs of printing meeting papers and mail outs.

Former Law Society Pro Bono Committee

The Law Society Pro Bono Committee (PBC) was established in 1992 following the report of the Law Society's Pro Bono Task Force.

Objectives

The PBC's objectives were to:

- oversee the establishment of the Public Interest Law Clearing House (PILCH) and Pro Bono Referral Register,
- monitor the conduct of those activities
- oversee the implementation of other recommendations of the Task Force Report
- report annually to the Law Society Council and recommend any initiatives thought necessary.

Activities

The PBC received reports from and monitored the operations of the Law Society's Pro Bono Scheme and Pro Bono Solicitor, and was responsible for organising the Law Society's annual Pro Bono Awards.

Structure

The PBC comprised representatives of the following organisations and pro bono service providers:

- the Law Society
- community legal centres
- the Public Interest Law Clearing House (NSW) Inc
- Legal Aid NSW
- pro bono practitioners

The PBC was chaired by a Law Society Councillor.

Staffing

The Committee was supported by the Pro Bono Solicitor and the Manager of the Law Society's Community Assistance Department.

Budget

There was no separate budget for the Committee: the costs of supporting the Committee were absorbed by the Law Society. Apart from the cost of Law Society staff time, there were few costs associated with running the Committee. Committee members acted on a voluntary basis and meetings were hosted by law firms.

Legal Information Standards Council

The Legal Information Standards Council (LISC) was established in September 1997 at the initiative of the Law Foundation and the Law Society of New South Wales, with the support of the Attorney General. There are 21 members of the Council representing all aspects of producing and disseminating legal information in electronic form.

Objectives

The objectives of LISC are:

- to discuss and make recommendations for the coordination and provision of electronic legal information in New South Wales
- to ensure that resources used in the delivery of online legal information are expended efficiently and effectively, to the best advantage of the providers of the information, and of the community who use it
- to develop technical and publishing standards for electronic legal information delivery in New South Wales
- to provide a forum for communication and collaboration amongst key NSW-based online legal publishers
- to convene sub-committees within the Council for specific project responsibilities.

Activities

The activities of LISC are organised around three working groups:

1. Accessibility

- researching and promoting public access issues, such as the development of Web standards to ensure accessibility for people with disabilities.

2. Technical/Data Standards

- the development of standards that will allow for the efficient conversion of legal data into electronic form.

3. Citations

- ensuring the development of uniform standards for citing electronic legal information.

Structure

- LISC is divided into the Council and working groups on issues that arise in the area of electronic legal information.
- As issues are finalised, the relevant working party will be disbanded. New working parties will be formed as further issues arise. The decision to establish a new working party will come from LISC.
- Recommendations from working groups go to the Council to be discussed and, if approved, adopted and disseminated.
- Meetings of the Council are chaired by the Director of the Law Foundation.
- Each working group is headed by a convenor.

- The working groups meet every two to three months, depending on the issues that the group is working on; members use E-mail extensively between meetings to communicate with one another.

Staffing

The Law Foundation provides the secretariat for LISC for no fee. The secretariat's tasks involve:

- convening meetings
- taking minutes
- occasionally hosting meetings (although law firms have hosted meetings when a large number of people were involved)
- coordinating activities - for example, the Law Foundation took on the job of lobbying to get industry participation in the Council of Chief Justices Electronic Appeal Book Project.

Budget

The Law Foundation does not have a separate budget for the secretariat support it provides to LISC. The Law Foundation Director, his secretary and the Manager of Foundation Law all spend time on LISC activities. In relation to operating costs, LISC has letterhead but paper costs are quite low because most correspondence goes out by E-mail. The Law Foundation provides space for meetings, with big meetings held at the offices of law firms. There are no charges associated with this.

LISC members pay their own costs of attending meetings. There are only two interstate members - one from a commercial organisation and one from the Commonwealth Government - and these both pay their own travel costs.

5.3. Key implementation points from comparators for Model D

Resourcing issues

None of the advisory committees reviewed operate a budget for the secretariat support provided to it. In all three cases, the costs involved in acting as a secretariat are absorbed by the host organisation which undertook the work.

Several disadvantages to this approach were identified during the research interviews:

- The work associated with providing secretariat support has to be fitted in around the normal duties of the employees of the host organisation. As a result, some support tasks are not completed as quickly as they should be, or at all.
- The time and resources that can be allocated to tasks are limited: some support tasks are not carried out as well as they could be.

FONGA gave the example of developing submissions on new and difficult issues, such as competitive tendering for the provision of welfare services. Members of FONGA were unable to provide extensive feedback on this issue because of its complexity and because of their limited experience in the area to date. With a higher level of resources, more guest speakers could have been brought in to talk at FONGA meetings, and more consultations carried out in small groups. This would have resulted in the development of a better submission to government.

If Model D is adopted, the committee should secure funding to pay for dedicated secretariat support.

The secretariat support required under Model D will involve both administrative work and policy work. If the size of the committee is small, the administrative work will not be particularly onerous, particularly if E-mail is used to the extent that it is by LISC. In this case, it should be possible to employ one person to undertake both aspects of the support work. Given the experience of the organisations reviewed above, secretariat support could be provided by a person working on a part-time basis.

An annual budget of around $30,000 would allow for:

- the employment of a part-time policy officer. Calculated pro rata on an annual salary of $65,000, an amount of $18,500 would allow for an average of 10 hours work per week.
- some research and promotional activities.

Organisational planning

- the committee must have specified and clear objectives. The lack of such objectives from the outset can lead to confusion and possibly disagreement among committee members as to the purpose of the committee, and lack of focus in the activities of the committee.
- to complement its objectives, the committee must establish clear membership criteria and processes.

Committee procedure

- the committee should not be too large. In a large group it is difficult to achieve high quality and active participation from all members. If a large committee is established, then a mechanism needs to be put in place to enable specific issues to be dealt with in smaller groups. An example is the constitution of working groups by LISC.

- the committee chair should be a senior person within the legal profession and someone who has a strong track record of involvement in pro bono work. In addition, committee members representing legal practitioners should be experienced in pro bono work and "leaders" in this field within the legal profession.
- principles have to be established to deal with disagreements among organisations represented on the committee. In the case of FONGA, there is a tradition of agreeing to disagree: if the meeting cannot reach an agreed position on an issue, then each member organisation is free to pursue the issue in its own way. This would not be a desirable approach in a field as small as pro bono legal services.

FONGA's approach is also unlikely to be applicable because of the different role FONGA plays compared to the proposed pro bono advisory committee. FONGA is an organisation of peak bodies. A pro bono advisory committee will be an organisation of service providers, with one of its objectives being to introduce some agreed standards into service provision. This will not be achieved if members do not feel bound by the committee's decisions.

Outcomes

- a mechanism should be established to ensure the continuing endorsement of the committee's activities by all stakeholders, not only those represented on the committee. For example, there could be a program of regular consultations, or communication with stakeholders through an occasional newsletter.

6

Sources of funds

There is no easy answer to the question:"how will it be funded?". Securing funds will require extensive efforts, and a considerable degree of goodwill among organisations with a current interest in pro bono services and pro bono referral services.

- PILCH is an example of a members-funded pro bono referral scheme; any of the above models could be funded to some extent by members fees. The PILCH experience demonstrates however that members funding is an insufficient funding basis, and that membership support requires a substantial amount of servicing beyond the ordinary business of the organisation.
- Similarly, all the existing pro bono referral schemes rely to some degree on in kind support being provided by a host or support organisation. Any of the above models could be supported to some degree in this way, but not in whole.
- Sponsorship support may be achievable if and when the organisation, whatever model is adopted, establishes itself, its role and its importance. This is an uncertain source of funds in the future, and can not be relied on the establishment phase or indeed in the first years of operation.
- In principle grant funds are, typically, the major source of funds for a public interest venture. In practice, grant funds are becoming increasingly scarce. It is possible that some funds would be available from private philanthropic trusts, but only as a small proportion of the necessary amount.
- It is possible that the NSW Attorney General's Department would have an interest in contributing to the operation of one of the models proposed.
- The most likely source of grant funds is the Solicitors Trust Account Fund, proposed to soon become a part of the Public Purpose Fund. This Fund currently funds two of the three referral schemes, through allocations made for that purpose to the NSW Law Foundation. The schemes of the Law Society and Bar Association are so funded, at this stage to June 1999.

If approaches were to be made to the Trustees of this fund, it may be that the possibility of funding one of the models would be considered as part of a decision whether and what basis to continue to fund the existing referral schemes.

COMPARATIVE SUMMARY OF THE FOUR MODELS

	Central contact point	**Central clearing house**	**Support agency**	**Advisory committee**
Vision	Improved access to justice through the promotion and support of pro bono legal services	Greater equality of access to legal services through a strong pro bono culture	To enhance the capacity of the legal profession to provide pro bono legal services	An efficient and effective pro bono sector
Mission	To make the work of pro bono legal service providers easier, more efficient and more effective by: · providing a central information point about the availability of pro bono legal services · providing assistance with the implementation of 'best practice' policies and procedures · developing practical ways to assist legal practitioners to conduct pro bono cases · identifying ways to engage more lawyers in pro bono work fostering the exchange of information between service providers · collecting information about the provision and value of pro bono services	To provide a central agency for pro bono legal services in order to: · improve public access to pro bono legal assistance · maximise the resources available to pro bono work · minimise gaps or duplication in the provision of pro bono services	To support the legal profession in its delivery of pro bono legal services by: · providing assistance with the implementation of effective policies and procedures · identifying ways of engaging more lawyers in the pro bono system · developing practical ways to assist legal practitioners to conduct pro bono cases fostering the exchange of information between service providers · conducting research on issues relevant to pro bono legal services	To maximise the effectiveness of pro bono legal services by providing a forum for the exchange of information and ideas among pro bono service providers
Constitution	Independent organisation	Independent organisation	Independent organisation	Unincorporated body
Staffing	Director (full time) Information officer (full time) Project officer (part time) Admin assistant (full time)	Director (full time) Solicitors (2 full time) Admin assistant (full time)	Director (full time) Project Officer (part time) Admin assistant (full time)	Policy officer (part time) to provide secretariat support
Estimated annual budget	$241,000	$283,000	$187,000	$34,500
Funding sources	Attorney-General's Department Law Foundation Legal Aid NSW large law firms large corporations (eg banks) membership fees in-kind support from the above organisations	Attorney-General's Department Law Foundation Legal Aid NSW large law firms large corporations (eg banks) membership fees in-kind support from the above organisations	Attorney-General's Department Law Foundation Legal Aid NSW large law firms large corporations (eg banks) membership fees in-kind support from the above organisations	Attorney-General's Department Law Foundation Legal Aid NSW large law firms large corporations (eg banks)

COMPARATIVE TABLE OF THE FEATURES OF THE FOUR MODELS

	A - Central contact point	B - Central clearing house	C - Support agency	D - Advisory committee
Least change from the current arrangements			√	√
Most change from the current arrangements	√	√		
Least infrastructure and funding required			√	√
Most infrastructure and funding required	√	√		
Maintains the present range of pro bono schemes and activities	√		√	√
Offers lawyers choice in how to participate in pro bono work	√		√	√
Allows for continued local control and a sense of 'ownership' of the referral schemes by participants	√		√	√
Provides clients with coordinated access to pro bono services	√	√		
Capacity to monitor and improve quality of pro bono legal services	√	√		
Capacity to improve quality of pro bono legal referral services	√	N/A	√	√
Co-ordinated promotion of a pro bono culture in the profession and in legal education	√	√	√	
Capacity for research into pro bono legal services	√	√		
Source of information about pro bono activity	√	√	√	√
Source of pro bono literature and resources	√	√	√	
Development and promulgation of pro bono legal service policy	√	√	√	
Public promotion of the profile of pro bono legal service providers	√	√	√	

Appendices

A

List of organisations reviewed

Model A - a central contact point

The Council on the Ageing (NSW) Inc

Interview conducted with Lewis Kaplan, Executive Director.

The NSW Community Legal Centres' Secretariat Inc.

Interview conducted with Jane King, Policy and Project Worker.

Model B - a central clearing house

Public Interest Law Clearing House Inc

Public Interest Law Clearing House (Vic) Inc

Telephone interview conducted with Denis Nelthorpe, Acting Manager.

Model C - a support agency

Solicitors Pro Bono Group (England and Wales)

Written responses to questions received from Peta Sweet, Director.

NSW Community Legal Centres' Management Support Project

Interview conducted with Jill Dimond, Financial and Administrative Systems Support Coordinator and David Vaile, Information Technology Systems Support Coordinator.

Model D - an advisory committee

Federation of Non-Government Agencies

Interview conducted with Mary Perkins, Deputy Director (Policy), NCOSS and Wendy Hall, Administrative Officer, NCOSS.

Former Law Society Pro Bono Committee

Interviews conducted with Kim Cull, last chairperson of the Committee, and Nancy Walker, Law Society Pro Bono Solicitor.

Telephone interview conducted with Lurline Dillon-Smith, former Law Society Pro Bono Solicitor.

Legal Information Standards Council

Interview conducted with Sandra Davey, Manager, Foundation Law (Law Foundation of New South Wales).

B

Interview schedule

[Note that this interview schedule was modified to suit the particular organisation being studied]

History and operation of the organisation

1. When was the organisation established?
2. What factors led to its establishment?
3. How is the organisation structured? For example, is it accountable to a board?
4. What are its main functions/objectives?
5. What is the breakdown of time or resources spent on each activity?
6. Who are the organisation's clients? How many people does it service each year?

Resource requirements

7. How many staff does the organisation employ? What are their positions? What does each person do? What is the cost to the organisation?
8. Is the organisation assisted by volunteers? How reliant on volunteers is it? Where do the volunteers come from?
9. How is the organisation accommodated? What is the cost of this accommodation?
10. What is the organisation's overall budget? What are the major operating expenses?

Funding sources

11. How is the organisation funded?

Advantages and disadvantages of the model

12. What features of the organisation's structure are 'successful' in your view: that is, what features assist the organisation to achieve its objectives?
13. What do you think are the negative features of the structure?

Improvements that could be made to the model

14. In your view, are there any ways in which the constitution or operation of the organisation could be improved?
15. The organisational model that has been proposed by the Centre is aimed at developing and implementing a coordinated approach to the provision of pro bono legal services. Given the experience of your organisation, do you think that there are any aspects of its operation that would be particularly important to its success in this regard?

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