

## **NATIONAL PRO BONO RESOURCE CENTRE**

### **Pro Bono News Issue 21: Volume 2/2006**

Welcome to the second edition for 2006 of the eNewsletter of the National Pro Bono Resource Centre (NPBRC). The Centre is affiliated with the Faculty of Law at the University of New South Wales and is funded by the Attorneys-General Departments of the Commonwealth, State and Territory governments. To access archived e-Newsletters [click here](#).

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#### **1 Cth. A-G's Legal Services Directions fail to incorporate Conflicts Protocol**

In 2003, following extensive consultation with the legal profession, the Centre proposed that Governments in Australia adopt and implement a 'Conflicts Protocol' to address the perception that private lawyers and law firms are sometimes reluctant to provide pro bono legal services in matters against government agencies because of a perception that this will prejudice them in securing or retaining government legal work. See [Issues Paper and Protocol](#). The paper suggested that at the Commonwealth level, the Protocol be incorporated into the Legal Services Directions (LSD) issued by the Attorney-General. The LSD provide the rules under which the Australian Government conducts litigation and outsources legal services.

In 2004, the Commonwealth Attorney-General initiated a review of the LSD. The Review sought submissions on an amendment to the LSD that would have incorporated the Protocol, at least in part. The Centre (and others including PILCH

(Vic)) made a submission to the Review urging the Commonwealth to take the opportunity to implement the Centre's Protocol within the LSD, as discussed in the Review's Issues Paper. The Senate Legal and Constitutional References Committee in its *Legal Aid and Access to Justice Report* tabled June 2004 recommended that the Commonwealth Attorney-General issue binding directions to federal government agencies to address this issue.

The Attorney-General's Department has now issued the Legal Services Directions 2005, in force from 3 April 2006. Regrettably, the Conflicts Protocol has not been implemented or adapted into the LSD, and the Commonwealth has missed an opportunity to address a widely perceived barrier to pro bono work.

## **2 Centre news**

### **Regional rural and remote pro bono: models and opportunities**

The Centre has published its information paper on regional rural and remote (RRR) pro bono in Australia, which is being launched in Western Australia on 8 May 2006 as part of WA Law Week. The paper, *Regional, rural and remote pro bono: models and opportunities*, follows from the Centre's Law & Justice Foundation of NSW-funded project facilitating pro bono in RRR areas in NSW. The paper aims to raise awareness and provide information and ideas to encourage the uptake and expansion of pro bono assistance to disadvantaged communities in RRR areas. [Click here](#) to access the report on the Centre's website.

### **New Policy and Research Officer**

A new Policy and Research Project Officer has been appointed to the Centre. Olivia Wellesley-Cole has, and continues to, work in the access to justice sector with migrants and refugees and as Coordinator of the Women's Domestic Violence Court Assistance Scheme network across NSW with Women's Legal Services NSW. Olivia has a Masters degree in Management Science and is currently completing a Masters in International Law. Olivia will be working at the Centre for 3 days a week on the national survey of the legal profession's pro bono work, government conflicts and updating information on pro bono work with Indigenous legal organisations. [Contact Olivia](#).

## **3 Law & Justice Foundation of NSW launches 'Justice Made to Measure'**

The Law and Justice Foundation of NSW (LJF) has released *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas*. It is the latest volume in the LJF's *Access to Justice and Legal Needs Program* which began in 2002 with the aim of providing empirical data to inform policy development and legal service provision to disadvantaged people in NSW.

The LJF conducted a legal needs survey across six areas of NSW, selected for their lower ratings on Australian Bureau of Statistics socio-economic indicators, including three suburban areas (South Sydney, Campbelltown and Fairfield), one major provincial area (Newcastle) and two rural/remote areas (Walgett and Nambucca). The survey was conducted during September-October 2003 via telephone with 2431 randomly selected residents aged 15 years or over.

The survey examined people's experiences of legal events during the previous 12 months. It measured the incidence of legal events, participants' responses to them, including the use of legal services, satisfaction with the assistance received, the resolution of legal events and participants' satisfaction with the outcome of legal events.

The research found relatively high level of legal need across the six disadvantaged regions. The report noted that some individuals were particularly vulnerable to legal events, including people with a chronic illness or disability. Amongst other findings, the study revealed that Indigenous people had a notably high incidence of credit/debt, employment and family law issues. It also noted a substantial proportion of people experience barriers in seeking help.

Perhaps surprisingly, the report noted a substantial rate of inaction in response to legal events, and that traditional legal advisers such as private lawyers, legal service agencies and courts were rarely used. Three-quarters of those who *did* seek help for their legal problem(s), approached non-legal advisers only, including friends, family and non-legal professionals.

The findings of the report suggest the benefit of tailoring legal education, advice and assistance services to meet the specific legal needs of different socio-economic groups. The report concludes that, "in summary, a multi-dimensional approach to legal service provision, which includes a range of reactive, preventative and proactive strategies would enable legal services to be more effectively tailored to meet the diverse needs and experiences of different individuals. Such an approach would require appropriate resourcing and quality assurance, and effective coordination by government".

[Click here](#) to access the full report on the NSW Law and Justice Foundation's website.

#### **4 Pro bono legal services in Western Sydney**

Dr Gillian McAllister and Associate Professor Tom Altobelli, from the University of Western Sydney, have recently published the findings of research they conducted into the provision of pro bono legal services by smaller law firms in Western Sydney.

Funded by the Law and Justice Foundation of NSW, the report is based on interviews with 12 practitioners from smaller law firms in the Liverpool, Macarthur, Parramatta and north-west regions of Western Sydney. The researchers investigated the types of pro bono legal work undertaken, the motivation for undertaking pro bono work, how pro bono work is organised within the firm; constraints on pro bono work, and ways to support the pro bono work carried out by firms in Western Sydney.

The study found that practitioners in smaller law firms in Western Sydney undertake a significant amount of pro bono work, including representing disadvantaged people, assisting charitable and community organisations, and participating in community legal education programs. The primary motivations for undertaking such work were a sense of social justice, and strong ties with the local community.

Although the firms participating in this study did not have highly structured policies in place for pro bono work, there was a general consensus as to the appropriate criteria for accepting pro bono matters.

Predictably, a significant barrier to providing pro bono work was the limited financial capacity of a smaller firm, noting the effect on these practices of the amendments to personal injury law. Other constraints noted were the sometimes complex and demanding nature of pro bono cases. Disbursement assistance schemes were found to be of little assistance to practitioners undertaking pro bono work. Suggested mechanisms of support for pro bono lawyers in this report included establishing local pro bono networks of doctors, other experts and barristers, and the capacity of the courts to extend some leniency to pro bono lawyers in relation to procedural issues.

A clear distinction was drawn by the practitioners between legally aided work and pro bono work. Some of the practitioners preferred to undertake a matter on a pro bono basis rather than applying for a grant of legal aid because of the relatively high administrative and other costs associated with complying with a grant of legal aid.

The study highlights the preference of practitioners in small Western Sydney law firms to remain outside the formal pro bono schemes in order to retain autonomy and flexibility, and reduce administrative burdens. The full report is [available on the Centre's website](#).

## **5 In house corporates and pro bono in the UK**

An article by Ed Thornton in *Legal Week*, a UK publication for lawyers, reports that the UK Solicitors Pro Bono Group (SPBG) is in talks to persuade the legal teams of at least a dozen bluechip companies to sign up to its agenda, in what would be a major breakthrough for the campaign body.

The SPBG, which now operates under the name LawWorks, has targeted members of the Association of Corporate Counsel Europe in a series of recent meetings. The body represents in-house lawyers from more than 30 bluechip companies, including BP, Dell, McDonald's and Tyco.

Signing up a number of major companies would be a huge boost for the pro bono cause, which Thornton says has traditionally struggled to attract in-house lawyers, in part because of restrictions on in-house lawyers acting for anyone but their employer.

Although the Law Society amended its rules in 1998 to allow employed lawyers to give pro bono advice, only a handful of companies including BAE Systems, Vodafone and Lloyds TSB have been active. For full report see the 30 March 2006 issue at [www.legalweek.net](http://www.legalweek.net).

The Centre is keen to liaise with any Australian in-house lawyers who are interested in enhancing pro bono work. [Contact](#) Jenny Lovric, Senior Policy and Research Officer.

## **6 ABA Pro Bono & Public Service Best Practices Resource Guide**

The American Bar Association has produced the *ABA Pro Bono and Public Service Best Practices Resource Guide*. The information contained on the site <http://www.abanet.org/renaissance/bestpractices/> is designed to help identify new ideas for engaging in pro bono and public service activities, regardless of the practice setting.

## **7 Correction**

In our last edition of the e-newsletter, the Centre reported that a grant from the WA Attorney-General to support an investigation into the feasibility of establishing a

Homeless Persons Legal Clinic based in Perth was being administered by Minter Ellison Lawyers. In fact, the grant is being administered by Blake Dawson Waldron. For more information on the feasibility study, please, contact David Ritter e: [dritter@yamatji.org.au](mailto:dritter@yamatji.org.au) or Max Beckerling e: [maxb@dch.com.au](mailto:maxb@dch.com.au).

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## **9 Centre contact details**

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