

*Pro Bono, Access To Justice And The University of  
Western Sydney – Where To Now?  
(An Exploratory Study)*

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## **Introduction**

The pressures facing universities today are manifold, and universities have come to realise that they can no longer proceed as they have done in the past. Increasingly, many universities are being forced to perform a delicate balancing act between promoting increased access to tertiary education, while at the same time dealing with reductions in core funding from governments. Accentuating the tension, many Australian universities are not merely seen as brokers of education, but have been described as an extension of home and family; as self-contained villages with their own cultural life, social support and basic services.<sup>1</sup> Funding issues to one side, in living up to that role there is an expectation that universities engage their communities by confronting, as part of wider efforts, difficult societal problems. In short, educational institutions are trying to do more with less, and therefore studying the way(s) in which universities negotiate this dilemma has become as important as ever.

With six campuses and 35000 students, including approximately 3000 from overseas, the University of Western Sydney ('UWS') has emerged as one of the largest universities in Australia. It was founded in 1989 with a clear and fundamental purpose: to provide high quality and accessible education in a region of metropolitan Sydney historically under-resourced and undervalued. Given its short history UWS

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<sup>1</sup> Indeed the UWS Vice-Chancellor has said as much: see Professor Janice Reid AM, 'Fees fuel campus life', *The Australian* (Sydney), 17 March 2005, 13.

has much to be proud of. Nonetheless, the region in which it resides continues to face myriad challenges of which access to justice is but one. As a university committed to regional engagement it is imperative that UWS continue to review its progress in relation to 'needy' sectors of the community, including those groupings with substantial (and arguably unmet) legal needs. Thus, this paper seeks to explore alternative and more efficient means by which interested stakeholders such as small law firms, community legal centres ('CLCs'), larger city firms and the UWS Law School might share the burden of pro bono work in Western Sydney and, in turn, enhance access to justice.

Stage one of the project involved obtaining an overall view of the legal and justice needs of the community, with a view to identifying gaps that the University of Western Sydney may possibly ameliorate. It involved undertaking a comprehensive literature review surrounding current legal needs and disadvantaged legal groups, as well as current access to justice initiatives.<sup>2</sup>

In order to build on this literature, stage two of the project entailed in depth and semi-structured interviews with four Community Legal Centres in Western Sydney as well as the Director and Senior Researcher at the National Pro Bono Resource Centre ('NPBRC') at the University of New South Wales ('UNSW'). With the consent of the interviewees, all interviews with CLCs (excluding one) were audiotaped and transcribed with the researcher also taking notes throughout the process. Furthermore, phone interviews were secured with the acting pro bono partners of a number of large law firms. The author also spoke regularly and informally with a number of senior members of the profession, politicians, academics and legal practitioners about some of the issues afflicting Western Sydney.

In addition – and with the assistance of the Law Society of New South Wales ('the Law Society')<sup>3</sup> – the author has distributed a survey to 300 law firms in Macarthur, Parramatta and the Southern Highlands, those being the principal areas serviced by UWS's two law schools.<sup>4</sup> The survey aims to explore in greater detail: (1) the current pro bono arrangements of law firms in the area; (2) how firm workloads might be aligned with students and academics at the UWS; and (3) how UWS might better share its resources with local firms.

Despite the benefits of a triangulated methodology, the author

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<sup>2</sup> See in particular Louis Schetzer and Judith Henderson, *Access to Justice and Legal Needs – A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (2003).

<sup>3</sup> Special thanks must go to Ms Donna Baine and Ms Meredith Barr for their assistance with this aspect of the research.

<sup>4</sup> UWS has two fully-fledged law schools operating out of the Parramatta and Campbelltown campuses. In addition, a number of first year law subjects are taught at the University's Blacktown campus.

concedes a number of methodological deficiencies. Firstly, it is necessary to note that the data was collected at specific points in time, which limits any claims based on those observations to those times and participants. Secondly, the results of interviews with the staff of four CLCs and pro bono partners of large Australian law firms cannot be imputed to the entire CLC/legal sector. Thirdly, at the time of writing the research team has received roughly 71 usable survey returns, and is set to embark upon a 'chasing process'. In this respect there can be no shying away from the fact that this part of the research agenda is incomplete. Whilst a more specific and empirically dense paper based exclusively on the survey data will be disseminated in due course, it is submitted that even the data collected to date presents 'plenty of food for thought'.

Part A of the paper briefly explores definitions of pro bono and concludes that the definitional debate is a sterile one for the purpose of this investigation. The real objective, rather, is to explore how UWS, and universities like it, might work more strategically with legal providers in the region in order to enhance access to justice. The state of access to justice in Australia itself is then explored and the conclusion is drawn that universities can, for all their goodwill, only do so much in the absence of concomitant funding from governments to Legal Aid and CLCs. Part B then explores the Western Sydney experience with respect to pro bono contributions and meeting legal needs, drawing in particular on interview data obtained from meeting with the personnel of four Western Sydney CLCs. Informed by those interviews, Part C of the paper assesses the role of UWS as a university committed to regional engagement, exploring such issues as current pro bono patterns and motivations, before arriving at some general conclusions and recommendations as to how UWS might do better in the circumstances.

## Part A – Defining Pro Bono

Arriving at a precise definition for pro bono work is an exercise that has bedeviled the profession for some time.<sup>5</sup> In 1998 the Law Foundation of New South Wales supported a comprehensive study that, amongst other things, provided a clear definition of pro bono services.<sup>6</sup> That definition, which has remained fairly robust, is as follows:

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<sup>5</sup> For an interesting discussion regarding the strengths and weaknesses of various definitions see: Esther F Lardent, 'Defining and Quantifying Pro Bono: The Pros and Cons' (Paper presented at the *Second National Pro Bono Conference: Transforming Access to Justice*, Sydney, 2003).

<sup>6</sup> Law and Justice Foundation of New South Wales, *Future Direction for Pro Bono Legal Services in New South Wales* (1998, reprinted 2002) ('the 1998 Report').

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; and
- the improvement of the laws or legal system in a manner which will benefit marginalised or disadvantaged individuals or groups.<sup>7</sup>

This paper takes a pragmatic and utilitarian view that the more people who are legally assisted – the better. Whilst there is a great deal to be said for those firms that go about their pro bono responsibilities according to their ability and with minimal fanfare, it would be misguided to think that all pro bono work is altruistic. Accordingly the author does not wish to get into semantics about what constitutes pro bono and what does not. The real objective of this paper is to investigate how UWS (and universities like it) might work more strategically with legal providers in the region in order to enhance access to justice for all.

## The need for the project

Research to date demonstrates that the demand for pro bono services is a demand that falls unequally on the legal profession. Whilst private practitioners in small firms spend more time on pro bono matters than their larger counterparts, they are often in a worse financial position to take on non-paying work.<sup>8</sup> Moreover the large law firms that can best afford it generally specialise in areas least called upon for pro bono work notably commercial and corporate law. The historically haphazard nature of pro bono legal services has done little to assuage the problems arising

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<sup>7</sup> This final criterion was not included in the 1998 Report, but was added on by the Law Society in 2002 as part of its Pro Bono Policy. See 'New Pro Bono Policy Spells Out Commitment and Strategies' (2002) 40(1) *Law Society Journal* 37.

<sup>8</sup> Australian Bureau of Statistics, *Legal Practices Australia 2001–02* (2003) indicates that lawyers located outside capital cities undertake, on average, more than twice the amount of pro bono work than lawyers in capital cities, and that lawyers in small practices, particularly those with only one principal, did significantly more pro bono than lawyers in practices with 10 or more principals/partners. See also M Gawler 'Pro Bono in the Suburbs and Country' (Paper presented to the *First National Pro Bono Conference*, Canberra, 2000).

from this mismatch. Although developments such as Law Access,<sup>9</sup> the Public Interest Law Clearing House and the NPBRC have gone some way in alleviating problems of coordination, it would seem that many diverse pro bono services are offered by a large number of groups and organisations, without clear lines of communications or referral networks. Most schemes operate independently, and must at times present a confusing array for members of the public who need to access essential pro bono services.<sup>10</sup> As the Law Society's 2001 Discussion Paper concluded: 'Given the large number of groups and organisations, the delivery appears to be somewhat disorganised and disparate'.<sup>11</sup> Among other things, there was disturbing evidence given to the National Pro Bono Task Force in 2001 to suggest that, despite the high level of unmet legal need, and all the controversy over the level of legal aid funding, there were nevertheless some large firms which were unable to spend their annual pro bono budgets (because of insufficient referrals).<sup>12</sup> Against this history of adhocery,<sup>13</sup> calls for greater centralisation have been widespread. This was confirmed in the 71 returned surveys; a large proportion of respondents when asked 'Are you satisfied with current pro bono arrangements in NSW?' indicated that they were not.<sup>14</sup>

While the various pro bono referral schemes in operation work differently the following characteristics would appear to be germane:<sup>15</sup>

- The schemes receive far more applications than they are able to refer;
- All schemes have recorded substantial increases. In fact, in some jurisdictions the increase has been as high as 600%;<sup>16</sup> and
- Not all of the schemes provide free legal assistance per se. Assistance under various schemes may be provided on a speculative, reduced fee, no fee or negotiated fee basis.

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<sup>9</sup> Law Access NSW was established in 2002 and provides free telephone advice, referral services and legal information. A single point of access, it merges the services formerly provided by the Legal Aid Commission HelpLine and the Law Society of New South Wales Community Assistance Department.

<sup>10</sup> Law Society of New South Wales, *Pro Bono Work Promoting Cultural Change: Discussion Paper on the Review of Pro Bono Services by the NSW Legal Profession* (2001).

<sup>11</sup> *Ibid.*

<sup>12</sup> *Report of the National Pro Bono Task Force to the Commonwealth Attorney-General* (2001) Appendix C.

<sup>13</sup> This is a word coined by renowned management strategist Professor Henry Mintzberg. It describes a business strategy that is the converse to bureaucracy. In truth, the adhocery is almost an oxymoron inasmuch as it is a structural configuration that denies structure. See generally Sebastian De Brennan, 'Bureaucracy Versus Other Organisational Forms – The Dinosaurs are Back', *Journal of Business Ethics* (forthcoming).

<sup>14</sup> I appreciate that this is very vague and, as mentioned, a more statistically sound paper will be produced on the findings of the survey data in due course.

<sup>15</sup> National Pro Bono Resource Centre, *Submission to the Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice*, October 2003, 4.

<sup>16</sup> See NSW Bar Association, *2003 Annual Report*; see also Schetzer and Henderson, above n 2.

It would seem that these trends are unlikely to change anytime soon, especially given the state of access to justice in Australia.

### ***Access to Justice in Australia – Why universities can't go at it alone!***

The notion of access to justice or 'legal need' is capable of meaning different things to different people.<sup>17</sup> By no means definitive, the 1994 report of the Access to Justice Advisory Committee in Australia took a fairly permissive view of the concept. It saw access to justice as encompassing three broad objectives: equality of access to legal services and effective dispute resolution mechanisms; national equity (that is, access to legal services irrespective of place of residence); and equality before the law (that is, the removal of barriers creating or exacerbating dependency and disempowerment).<sup>18</sup> Regardless of the definition adopted, there is extensive evidence to suggest that these fundamental tenets are not being met.

This has been no better demonstrated than in the 2003 Report of the National Association of Community Legal Centres ('NACLC'), *Doing Justice*.<sup>19</sup> The NACLC provides the bold, though arguably accurate observation that it is time to move from 'talking justice' to 'doing justice'. In the 1990s alone they note that the following debates, inquiries, reports and research have taken place:

**Table 1: Forums and Events concerning access to justice in the 1990s**

**Source:** NACLC, *Doing Justice – Acting Together to Make a Difference* (2003)

Year	Event
1990	National Legal Aid Advisory Committee: <i>Legal Aid for the Australian Community: Programmes and Strategies</i>
1992	Senate Standing Committee on Legal & Constitutional Affairs: <i>Legal Aid: For Richer and For Poor</i>
1993	Senate Standing Committee on Legal & Constitutional Affairs: <i>The Cost of Justice: Foundations for Reforms</i>
1994	Access to Justice Advisory Committee: <i>Access to Justice: an Action Plan</i> (Cth)
1995	Law Council of Australia: <i>National Summit on Legal Aid Funding</i>
1996	National Legal Aid: <i>Meeting Tomorrow's Needs on Yesterday's Budget: the Undercapacity of Legal Aid in Australia</i>

<sup>17</sup> Law and Justice Foundation of New South Wales, *Access to Justice Roundtable: Proceedings of a Workshop July 2002* (2003) Part 2 (Keynote Address).

<sup>18</sup> Access to Justice Advisory Committee, *Access to Justice: An Action Plan* (1994) 7–9.

<sup>19</sup> See National Association of Community Legal Centres, *Doing Justice – Acting Together to Make a Difference* (2003).

1997–98	Senate Standing Committee on Legal & Constitutional Affairs: <i>Inquiry into the Australian Legal Aid System</i> (3 reports)
1999	National Legal Aid & National Association of Community Legal Centres: <i>Towards 2010 – Legal Aid Forum</i>

Insightful is the NACLCLC's conclusion on the level of activity:

There is clearly no shortage of energy or concern, but it has not yet been harnessed to maximum effect. The time seems ripe for all the key players to come together in a renewed national determination to build a better justice system.<sup>20</sup>

Most stakeholders are in agreement that the optimal way to enhance access to justice is through the increased and sustained provision of Legal Aid. As a result, government admonitions for greater pro bono efforts from the profession have led to cynicism within the profession. The comments of one high profile legal personality are not atypical of those made in many returned surveys:

I regard many of the current activities as being nothing more than seeking to defray some of the load on Legal Aid and community legal centres. This is both dishonest, and erodes the true value of *pro bono publico* as a personal and professional commitment.<sup>21</sup>

While increased and sustained legal aid funding would go far in alleviating some of these concerns, it would seem that this funding has not been forthcoming. The following tables show the amount of funding provided for legal aid from 1993–2003 by the Commonwealth (Table 2) and the States and Territories (Table 3). Despite increases in funding in 2001/2002 and 2002/2003, it can clearly be identified that the level of funding is still not at the level it was in 1995/1996. This has occurred notwithstanding the significant growth in demand for legal aid services.<sup>22</sup> As was intended, the States have contributed more to the funding pool than the Commonwealth since 2001/2002. While the Commonwealth contribution to the pool in 2003 is only \$3 million more than it was in 1993, the amount contributed by the States has increased by \$75.15 million or 217% over the same period.<sup>23</sup>

<sup>20</sup> Ibid 3.

<sup>21</sup> Personal communication via email, 26 March 2004; See also J Cooper, 'Free Advice From Barristers and Solicitors', *Justis*, 19 March 2001; National Pro Bono Resource Centre, above n 15, 3.

<sup>22</sup> This can be attributed to population growth, the growth of legislation and increasingly strict laws on victimless crimes, a focus on strict law and order policies and the effect of the decisions in *Dietrich v R* (1992) 177 CLR 292 and *Re K* (1994) FLC 92-461. See generally NPBRC above n 15, 33.

<sup>23</sup> National Association of Community Legal Centres, above n 19, 9.

**Table 2: Commonwealth funds for legal aid 1993–2003 (\$million)****Source:** NALCL, *Doing Justice – Acting Together to Make a Difference* (2003)

State/ Territory <sup>24</sup>	1993/ 1994	1994/ 1995	1995/ 1996	1996/ 1997	1997/ 1998	1998/ 1999	1999/ 2000	2000/ 2001	2001/ 2002	2002/ 2003
NSW	38.65	38.35	38.56	41.09	31.31	31.32	31.27	33.89	36.61	39.36
VIC <sup>25</sup>	33.83	34.32	36.85	35.5	33.00	27.80	27.75	27.87	28.07	27.80
QLD	17.13	18.03	18.22	19.80	18.44	18.00	18.02	19.90	21.80	23.70
SA <sup>26</sup>	9.40	9.08	9.51	9.56	8.96	8.96	9.28	9.45	9.90	10.35
WA <sup>27</sup>	11.50	11.40	12.80	12.50	8.30	8.30	8.30	9.00	9.70	10.50
TAS	4.36	4.00	4.25	4.44	3.72	3.72	3.72	4.23	4.14	4.08
ACT <sup>28</sup>	2.42	TBA	2.69	2.71	3.12	3.00	3.00	3.17	3.07	3.92
NT <sup>29</sup>	2.39	2.23	2.28	2.59	2.01	2.01	2.01	2.11	2.42	2.13
Total <sup>30</sup>	119.68	117.4+	125.16	128.19	108.86	103.11	103.35	109.62	115.71	121.84

**Table 3: Direct State/Territory grants for legal aid 1993–2003 (\$million)****Source:** NALCL, *Doing Justice – Acting Together to Make a Difference* (2003)

State/ Territory	1993/ 1994	1994/ 1995	1995/ 1996	1996/ 1997	1997/ 1998	1998/ 1999	1999/ 2000	2000/ 2001	2001/ 2002	2002/ 2003
NSW <sup>31</sup>	15.09	17.25	22.38	21.67	23.06	24.77	30.36	34.14	46.18	55.28
VIC <sup>32</sup>	23.94	23.94	24.05	24.22	24.36	24.15	28.14	28.08	31.46	32.56
QLD	9.78	8.69	9.73	10.77	14.14	15.26	17.89	18.22	20.43	20.69
SA	3.29	4.02	4.69	4.52	4.58	6.15	7.88	8.51	9.41	9.69
WA <sup>33</sup>	7.4	7.6	8.2	8.2	10.3	11.5	13.1	12.0	12.8	13.3

<sup>24</sup> All Figures exclude funding for CLCs except Victoria.<sup>25</sup> Figures pre-1996/1997 include CLC funding.<sup>26</sup> 1993/1994 includes \$417 000 for one off Commonwealth project.

1999/2000 includes \$320 000 for Expensive Case, \$300 000 refunded when case did not proceed.

<sup>27</sup> Figures excluding funding relating to Indian/Ocean Territories Services.

2000/2001 Figure excludes PDR funding of \$176 000

2001/2002 Figure excludes PDR funding of \$560 000, Expensive Case funding of \$74000 and LBT funding of \$50000.

2002/2003 Figure excludes PDR funding of \$110 000, Expensive Case funding of \$290 000 and LBT funding of \$50000.

<sup>28</sup> Total Commonwealth and State funding for 1995/1996 was \$4.6 million.<sup>29</sup> 1992/1993 and 1996/1997 Figures include one off payments.

2001/2002 Figures include pre-payment of \$201 800

2002/2003 Figures exclude pre-payment of \$201 800

<sup>30</sup> Figures for 2002/2003 financial year still subject to audit for some Commissions as at 10 August 2003.<sup>31</sup> All Figures exclude funding for CLCs, WDVCA except Victoria.<sup>32</sup> Figures including funding for CLCs.<sup>33</sup> 2000/2001 Figure excludes \$644 000 for expensive cases

2001/2002 Figure excludes \$407 000 for expensive cases and \$336 000 for Finance Brokers Inquiry.

2002/2003 Figure excludes \$686 000 for expensive cases, \$291 000 for Finance Brokers Inquiry and \$721 000 for Police Royal Commission.

TAS	2.23	2.60	2.69	2.73	2.70	2.73	2.74	3.08	2.85	3.00
ACT <sup>34</sup>	1.54	TBA	2.54	1.68	1.76	1.79	1.76	1.89	2.01	2.42
NT	0.66	0.81	0.98	1.14	1.88	1.94	1.88	1.91	2.00	2.14
Totals	63.93	64.9+	75.26	<b>74.9</b>	82.78	88.29	103.75	107.83	127.14	139.08 <sup>35</sup>

**Table 4: Tabular depiction of total State and Commonwealth grants for legal aid 1993-2003 (\$million)**

**Source:** *NACLC, Doing Justice – Acting Together to Make a Difference (2003)*

	1993/ 1994	1994/ 1995	1995/ 1996	1996/ 1997	1997/ 1998	1998/ 1999	1999/ 2000	2000/ 2001	2001/ 2002	2002/ 2003
Cth	119.68	117.4+	125.16	<b>128.19</b>	108.86	103.11	103.35	109.62	115.71	121.84
States	63.93	64.9+	75.26	<b>74.93</b>	82.78	88.29	103.75	107.83	127.14	139.08

As illustrated, although there have been some increases to the legal aid funding pool in the last decade, these increases have been marginal. The impact of years of inadequate funding is that Legal Aid Commissions are being forced to ration resources through the imposition of unrealistically stringent means and merits tests and reducing the range of legal matters for which grants are available.<sup>36</sup> This has had a considerable impact on many low and middle-income earners. This socio-economic group, while deemed to be ineligible for legal aid under the Commission’s means test, is also unable to afford the services of a private solicitor. Often referred to as the ‘working poor’, this demographic has been recognised as greatly disadvantaged.<sup>37</sup>

There are, perhaps, five serious issues facing the justice system presently. First, evidence suggest that Legal Aid charge-out rates have remained stagnant for some ten years, with solicitors receiving in real terms what they had been paid in 1992.<sup>38</sup> *The Report of the National Pro Bono Task Force*<sup>39</sup> reveals that, from a private lawyer’s perspective, even legal aid should be considered pro bono practice given the relatively low level of fees paid. For example, a survey by National Legal Aid of 260 firms doing legal aid family law work showed that in 1998–99 Australian solicitors ‘provided a subsidy of at least \$17,500,000 and more likely in excess of \$20,000,000 if they had agreed to accept 80% of the ordinary

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<sup>34</sup> Total Commonwealth and State funding for 1995/1996 was \$4.6 million.  
<sup>35</sup> Figures for 2002/2003 financial year still subject to audit for some Commissions as at 10 August 2003.  
<sup>36</sup> National Association of Community Legal Centres, above n 19, 13; see also Law Society of New South Wales, *Access to Justice – Final Report (1998)* 59.  
<sup>37</sup> Schetzer and Henderson, above n 2, 84.  
<sup>38</sup> Roderick Campbell, ‘Law Society Warns of a Legal Aid Crisis’, *Canberra Times* (Canberra), 29 November 1999, 3.  
<sup>39</sup> *Report of the National Pro Bono Task Force*, above n 12.

professional rate of \$213 per hour'.<sup>40</sup>

Second, the survey mentioned above by National Legal Aid notes a continuing exodus of private sector solicitors from legal aid work. It was found that 52% of firms did less legal aid work in 1998–99 than they had done in 1994–95 and many firms reported that they no longer did any legal aid work at all.<sup>41</sup> In another survey conducted by the Law Institute of Victoria, 27% of its lawyers working in magistrates' courts now refuse to take on any legal aid work.<sup>42</sup> With fewer lawyers putting themselves forward, the spectre of conflicts of interest may also increase.

Third, anecdotal evidence suggests that criminal law has become increasingly 'juniorised' as novice lawyers pick up the legal aid work that their senior counterparts have 'left behind' (which despite providing a valuable induction for young lawyers has serious implications for the operation of the criminal justice system).

Fourth, with the significant growth in the number of self-represented litigants, the efficiency of courts has been stifled.<sup>43</sup> Moreover, research in the area has confirmed that: (a) representation is relevant to the outcome of the matter; (b) settlement by negotiation is more effective with representation; and (c) the failure rate of litigants in person is significant.<sup>44</sup> Particularly acute is the number of self-represented litigants in family law matters.<sup>45</sup> Evidence shows that the number of individuals representing themselves in the Family Court is around the 40% mark.<sup>46</sup> According to the Australian Law Reform Commission's *Managing Justice* Report, 18% of Federal Court cases involved at least one litigant in person, with 31% of applicants in migration cases being self-represented. Even in the High Court, where the issues often hang on technical legal points, about 27% of litigants seeking leave to appeal are unrepresented.<sup>47</sup> Absent from these figures, however, is the untold number of individuals not pursuing their legal interests and rights at all – simply because they cannot afford to do so. It is little wonder therefore that former High Court Chief Justice Brennan has spoken of a legal system in 'crisis'.<sup>48</sup>

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<sup>40</sup> Ibid 5.

<sup>41</sup> See also Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, 2000) [5.113].

<sup>42</sup> Ashley Crossland, 'Legal Aid Solicitors Being Paid the Same as in 1992', *Australian Financial Review* (Sydney), 24 May 2002, 58.

<sup>43</sup> See Law Society of NSW, *Self-represented Litigants – the Law Society's Role* (2001).

<sup>44</sup> Australian Law Reform Commission, above n 41, [5.209].

<sup>45</sup> See for example Justice Alistair Nicholson, 'Legal Aid and a Fair Family Law Justice System' (Speech delivered at the *Legal Aid Forum Towards 2010*, Canberra, 21 April 1999).

<sup>46</sup> See Rosemary Hunter et al, *The Changing Face of Litigation: Unrepresented Litigants in the Family Court of Australia* (2002).

<sup>47</sup> Cindy Wockner, 'Pros and Cons of Legal Charity', *The Daily Telegraph* (Sydney), 19 March 2001, 20.

<sup>48</sup> Ben Mitchell, 'Justice Danger in Legal Aid Cuts', *The Australian* (Sydney), 2 August 2000, 2.

Fifth, the point has been made for many years that with Legal Aid in such a parlous state unsustainable pressures have been placed on the CLC sector. While considerable information exists to substantiate these claims<sup>49</sup>, particularly compelling is the NACLC's 2003 Budget Submission to the Federal Government.<sup>50</sup> Based on ABS statistics the submission notes that there has been an imperfect, though widely adopted, funding formula that prescribes adequate staff levels for CLCs. This funding model takes for granted that volunteers will continue to prop up the system. The submission also notes that although there have been annual increases in total funding, in real terms it is estimated that CLCs have been forced to absorb substantial increases in operating expenses. As a consequence wages for CLC staff continue to fall relative to the private sector making it hard to attract quality staff.<sup>51</sup> Table 5 shows wage discrepancies for lawyers in the public sector relative to their private sector counterparts, while Table 6 depicts the growth in CLC operating costs.

**Table 5: A comparison of wages between private sector solicitors and those working in CLCs** (Source: NACLC, *Community Legal Centres – An Investment in Value Investing in Community Law*, Budget Submission to the Commonwealth Government 2004-2007, August 2003).

Private Practice	Sydney	Melbourne	Brisbane
1 year	\$55 – 65000	\$48 – 62000	\$45 – 60000
3 years	\$70 – 85000	\$62 – 83000	\$55 – 80000
5 years	\$90 – 110 000	\$75– 110 000	\$65 – 95000
6 years	\$110 – 150 000	\$80 – 130 000	\$70 – 115 000
Senior Associate	\$130 – 190 000	\$110 – 180 000	\$75 – 140 000
<b>CLC National Range</b>	<i>Highest</i>	<i>Average</i>	<i>Lowest</i>
Principal Solicitor 5 years +	\$70000	\$46200	\$33000

**Table 6: Growth in CLC operating costs** (Source: NACLC, *Community Legal Centres – An Investment in Value Investing in Community Law*, Budget Submission to the Commonwealth Government 2004-2007, August 2003).

Expense	Range of costs	Note
Rent	\$0 – \$60000+	54% (ABS) increase over last 5 years

<sup>49</sup> See generally Sebastian De Brennan, 'Community Legal Centres: Whingers or Prophets?' (2005) 30 *Alternative Law Journal* 132.

<sup>50</sup> National Association of Community Legal Centres, *Community Legal Centres – An Investment in Value Investing in Community Law*, Budget Submission to the Commonwealth Government 2004-2007, August 2003.

<sup>51</sup> See also Kate Marshall, 'Community Legal Centres Struggle for Survival', *The Australian Financial Review* (Sydney), 25 July 2003, 56.

<i>Communications</i>	\$4400 – \$48500	12% (ABS) increase over last 5 years
<i>IT Maintenance</i>	\$2000 – \$30000	<i>Increasing faster over last 5 years with greater centre reliance on email and client data management systems</i>
<i>Advertising/Recruitment</i>	\$0 – \$12000+	<i>Varies according to staff turnover</i>
<i>Insurances</i>	\$4000 – \$10000	\$5,287 average increase in 2001/2002; 40% increase in 2002/2003
<i>Travel (to outreach services)</i>	\$2500 – \$106 000	Specialist Statewide and remote services incur greatest costs. Increases with petrol price rises.

There are numerous examples of CLCs in dire straits since the time of that submission. The 2004 Senate Legal and Constitutional References Committee noted that some CLCs were so under resourced that they had been forced to interview clients in cars.<sup>52</sup>

It is clear, therefore, that for all their goodwill, universities (which after all are plagued by their own financial difficulties) can only do so much.

## Part B – The Western Sydney Experience

In 2001 lawyers in New South Wales provided \$35 million in free or reduced fee work.<sup>53</sup> Of this, it has been estimated by the NSW Law Society that roughly one third of all pro bono work came from Sydney's western suburbs, home to UWS.<sup>54</sup>

Due to a range of socio-economic factors it is posited that the region of Western Sydney faces considerable access to justice barriers and is disproportionately dependent on the provision of pro bono services. In parts of Western Sydney, average per capita incomes are considerably lower than for Sydney as a whole. For example, in 2000/2001, average per capita income in Fairfield was \$31865, compared to \$38956 for the Sydney metropolitan area.<sup>55</sup> This income disparity inevitably reduces the ability of people in the region to access legal services. Providing support to solicitors to enable them to extend their pro bono work (through the use of the law students and academics) is one way to improve access to justice for people in this region.

In addition, areas such as Campbelltown (where UWS has a law

<sup>52</sup> See *Inquiry into Legal Aid and Access to Justice* (2004) Parliament of Australia <[http://www.aph.gov.au/senate/committee/legcon\\_ctte/legalaidjustice/](http://www.aph.gov.au/senate/committee/legcon_ctte/legalaidjustice/)> at 27 June 2004.

<sup>53</sup> Nicholas Meagher, 'President's Message: Commitment to Pro Bono' (2001) 39(3) *Law Society Journal* 5.

<sup>54</sup> Wockner, above n 47.

<sup>55</sup> Gillian McAllister and Tom Altobelli, 'Studying the Provision of Pro Bono Work in Smaller Suburban Law Firms' (Successful grant proposal sent to the Law and Justice Foundation of New South Wales, 2004).

school) and the Southern Highlands have documented a range of barriers to obtaining legal assistance. These include remoteness, isolation and physical distances from services often exacerbated by limited access to affordable and regular public transport.<sup>56</sup> A submission from Legal Aid to the Law and Justice Foundation has also pointed out that 'West of Parramatta (there are only three small community legal centres in Katoomba, Dubbo and Broken Hill)'.<sup>57</sup>

Although the small firms of Western Sydney have historically been extremely generous in terms of pro bono it is questionable whether they can sustain these efforts. As the NPBRC makes apparent:

...smaller practices are finding conditions harder as a result of difficulties in rural areas generally, and as a result of the so-called 'tort-reforms' and resultant restrictions on an important traditional area of practice. As mentioned above, conflicts of interest are also more likely to occur in small practices and communities. Disbursements are also likely to be higher for rural pro bono clients, especially travel and telephone costs.<sup>58</sup>

Further, surveys conducted by the Law Society indicate a drift of services away from rural areas to the city in the past three years.<sup>59</sup> The Australian Plaintiff Lawyers Association has also expressed concerns that the impact of recent legislative changes on people in regional areas (such as the Southern Highlands) will be particularly adverse:

It will become unprofitable for small practices to take on personal injury matters as they will not be cost effective to run as part of a broader unspecialised practice. Injured persons will be forced to go to larger legal firms in the city that are able to efficiently deal with this sort of litigation. Less regional law firms will take on these matters, leaving a gap in the services available to rural people in need of representation.<sup>60</sup>

A recurring theme in the returned surveys was that providing pro bono services had become increasingly difficult in the current legal market. Similar concerns were also noted by the four CLCs that were interviewed as well as the NPBRC.

### The voice of four Western Sydney Community Legal Centres

Not surprisingly, all of the CLCs visited emphasised a need for greater

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<sup>56</sup> Schetzer and Henderson, above n 2, 73.

<sup>57</sup> Ibid 76.

<sup>58</sup> National Pro Bono Resource Centre, above n 15, 8.

<sup>59</sup> The Law Society of New South Wales, *National Competition Policy – A Discussion Paper* (2002) 22.

<sup>60</sup> Submission of the Australian Plaintiff Law Association, in Schetzer and Henderson, above n 2, 75.

resources and, in particular, recurrent funding. The need for additional funding was immediately evident in three of the four centres visited. Operating out of converted old houses these were not only small but, as one director remarked, ready for refurbishment. These conditions would do little to quell feelings of powerlessness often felt by those seeking CLC advice,<sup>61</sup> particularly those up against large corporate or governmental clients ('often sitting as they are in their plush legal offices'). One CLC noted that it was experiencing major difficulties in meeting the Occupational Health and Safety standards. While the CLC coordinator saw this as a priority she was also acutely aware of the many other needs of the centre. For example, only a year earlier the centre almost lost its Aboriginal Legal Access Project – a programme considered vitally important in meeting the needs of a significant and expanding Aboriginal population in the area. A 12 month grant from a private benefactor meant that the Aboriginal Legal Access Project would continue, but the centre would continue to lobby government and local Members for much needed funding. Worst still, another centre pointed out that it had been almost dormant in relation to meeting the needs of its sizeable Aboriginal community due to lack of space and funding – and that this was no longer an acceptable position.

It was interesting to note in this context that, although not visited, another proximate CLC had during the investigative phase of the research been the subject of a Western Sydney newspaper article, headlined 'CLC in dire financial straits'. It was pointed out that the CLC on point received 'the lowest per capita funding of CLC in the state yet had the fastest growing client base'. Significantly, the article made apparent that the relevant CLC was charged with servicing the third largest local government area in Australia, containing amongst the most socially disadvantaged populations in the state, including a suburb which contained the largest Aboriginal population in NSW.

All CLCs spoke highly of the various pro bono contributions of local and large city law firms. It was remarked that firms could be more obliging when CLC needs were 'of a sexier nature' or where some positive exposure might be gained. However, it was clear that this was not the norm. Respondents spoke of various firms/solicitors who performed pro bono work frequently and without a desire for recognition and reward. One CLC coordinator was particularly adept in persuading law firms to assist her centre but was aware that at times the goodwill of benefactors had been strained by continual requests. Her next project, for example, was to seek a 'replacement photocopier' – a seemingly small request – but as she commented, 'not exactly an easy thing to ask for'.

Another centre (the oldest of those visited) seemed surprisingly well

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<sup>61</sup> Janet Jukes and Pauline Spencer, *Buying and Selling Justice: The Future of CLCs* (1998).

resourced. In contrast to the other three centres it was freshly painted, modern and had a discernibly professional feel. This centre had also managed to develop robust relationships with government and industry. Describing the coordinator of his centre as politically savvy, and a 'great networker', the senior solicitor at that centre also emphasised the importance of sound management to the success of his CLC:

...that's partly prudent management which for some years could have chosen to maybe pay staff more and perhaps allocated some of the funding into better equipment...

The established history and experience of this centre was an advantage in soliciting resources from the legal and extended community allowing it to leverage off its reputation and achievements when applying for new or additional funding. As one of the older CLCs, the centre seemed to enjoy a legitimacy within the wider community that was perhaps elusive to some of the newer centres:

...the advantage of being X years old is we have been quite good at running around and getting funding for a series of different projects which can then be pooled together.

Given the declining rates of Legal Aid and the additional strains placed on CLCs, one might expect CLC managers to be fairly disparaging toward government. However, this was not the case. Of course, the issue of lack of funding was raised frequently, but overwhelmingly feedback was both civil and constructive in nature. When asked: 'Would you say you are short of staff at the moment?' the Senior Solicitor at the oldest of the centres replied:

Well you know you've got to think logically. You could always add, so the next person you would have to add would be a lawyer. So, as a community legal centre we could always put up our hand and say we are short, but in some ways we're... you might notice from our office, we're quite well resourced.

As to the needs of the immediate area he said:

Well meeting the need? Yes we are to an extent. One of the interesting things about need is that it's very variable. Sometimes we talk about access to justice it assumes that everyone you see has a just cause. I mean a client comes in and has been booked twice in the same day for an offence? ...this guy comes in and he wasn't licensed, but yet was using learners' plates. The police booked him because there was no one in the car with him. He comes in and his excuse is that he is the only one in the family that can drive. I had to say to him - mate you are the only one in your family who can't drive.

Respondents were also quick to mention that a number of positive

developments had taken place. In its recent submission to the Senate Legal and Constitutional Committee Inquiry into Legal Aid and Access to Justice (September 2003) the Combined Community Legal Centres Group NSW noted there had been a number of 'good news' developments since the 1996–1998 Senate Inquiry into Legal Aid. For example, the support of governments in bringing about the Women's Domestic Violence Court Assistance Programme, additional Legal Aid solicitors in rural areas, the new legal advice services in Parramatta, community representation on the board of the NSW Legal Aid Commission.<sup>62</sup>

The centres also noted that government-funded services such as Law Access<sup>63</sup> had led to a visible reduction in the demand for telephone advice. One interviewee was a little more cynical about such developments suggesting that if programmes such as Law Access continued to grow, this would provide the government with yet another excuse to further erode CLC funding.

Notwithstanding funding constraints, the quality of CLC staff was impressive. One CLC solicitor had authored a prominent publication in the area of family law, and another CLC solicitor had published in the area of Apprehended Violence Orders. Three solicitors at one CLC had between them a combined total of fifty years in practice. With such experience at stake one can quickly see why CLC advocacy groups continue to highlight the asymmetry between private sector and CLC remuneration.

Also impressive was a distinctive CLC collegiality. Interviewees spoke of spending time at other centres and 'helping one another out'. For example, a solicitor from one centre had recently spent some time at another centre, advising in relation to employment law matters. National conferences and other developmental activities were also described as a worthwhile forum to interact and enable knowledge diffusion.

Every person interviewed indicated that, although challenging, their role within the CLC was both rewarding and enjoyable. One respondent stated that although he was now earning considerably less than he did in private practice, he enjoyed the diversity of work available at the CLC and the lower 'expectation of hours' relative to his previous job. Interestingly, this sense of job satisfaction continues to evade many lawyers working in private practice.<sup>64</sup>

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<sup>62</sup> Combined Community Legal Centres' Group NSW, *Submission to the Senate Legal and Constitutional Committee Inquiry into Legal Aid and Access to Justice: Impact of Current Arrangements Regarding Legal Aid and Access to Justice on NSW Community Legal Centres*, September 2003, 11–12.

<sup>63</sup> See above n 9.

<sup>64</sup> For a most recent account of this discontent see *Bankers and Lawyers a Miserable Bunch* (2004) SEEK Survey of Employee Satisfaction and Motivation in Australia <[http://www.seek.com.au/media/about\\_media\\_centre.asp](http://www.seek.com.au/media/about_media_centre.asp)> at 1 November 2004.

## Part C – The Role of UWS as a University Committed to Regional Engagement

Interviews with the CLCs revealed that all Centres had had some involvement with UWS. Generally, this consisted of taking on UWS law students as ‘student volunteers’ or for practical legal training placements. One CLC currently had three UWS academics sitting on its management committee, whereas another CLC had enjoyed academic representation in the past. All four CLCs recognised the students as an immensely valuable resource. For example, the contributions of thirteen UWS students to one centre had been formally recognised through a high commendation from the NSW Law and Justice Foundation.<sup>65</sup> Another centre also spoke highly of its law students in one of its publications:

Volunteer law students continue to offer significant contribution to the service the Centre can provide by providing administrative and legal research assistance. For the students the Centre offers a practical and socially useful application of their legal studies. By volunteering their time at the Centre not only are the student volunteers given the opportunity to enhance their legal and office skills but they are assisting the Centre and the local community.

The researcher had learnt from discussions with stakeholders that more students apply for positions at CLCs than they can actually absorb.<sup>66</sup> This was supported by the research which showed that none of the CLCs had a strategic approach nor necessarily needed one to attract student volunteers. As one respondent put it:

We never seem to have a shortage of people prepared to volunteer...now whether word travels?...I think what’s happening is the job market at the moment is really, really tight and I think students are having to be incredibly resourceful in trying to bridge the gap between ‘I’ve now got my law degree but I’ve got no experience’. And community legal centres offer a possibility of bridging that gap.

This is significant in that it confounds the work of scholars who claim that many volunteer organisations employ market type strategies to entice people to volunteer.<sup>67</sup> This is not to say CLCs took for granted the pool of students prepared to volunteer. Thus, a comprehensive study

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<sup>65</sup> See *UWS Law Students Help Improve Justice Services in Sydney’s South West* (2004) UWS <[http://apps.uws.edu.au/media/news/index.phtml?act=view&story\\_id=740](http://apps.uws.edu.au/media/news/index.phtml?act=view&story_id=740)> at 2 June 2004.

<sup>66</sup> The author can recall applying to one CLC in the second year of his Commerce/Law degree only to be rejected.

<sup>67</sup> C Vellekoop–Baldock, ‘Governing the Senior Volunteers in Australia, the USA and the Netherlands’, in J Warburton and M Oppenheimer (eds), *Volunteers and Volunteering* (2000); J Warburton and A Mutch, ‘Volunteer Resources’, in *ibid.*

of the CLC sector concluded that society cannot and should not take for granted the goodwill and commitment of the CLC volunteer.<sup>68</sup> John Corker, the Director of the NPBRC, has stated on the issue:

Facing the prospect of increasing debt caused by ever increasing HECS, many law students might blanch at the suggestion that they undertake pro bono projects for which they receive neither course credit nor financial reward.<sup>69</sup>

Despite HECS increases on the horizon, it appears that students continue to relish participating in voluntary legal settings and the fact that CLCs cannot take on every law student who is 'ready, willing and able' is most unfortunate when one considers the access to justice barriers afflicting certain groups residing in greater Western Sydney.

Just as it would be erroneous to assume all practicing lawyers perform pro bono work for altruistic reasons, so too is it misguided to think that all students do so out of benevolence. It would appear that the competitiveness of the legal market might have something to do with the seeming high demand for CLC volunteer placements. Today volunteering has earned its worth as a bona fide career move. Lene Jensen, Head of Careers at the UNSW, supports this view claiming: 'students who have never worked may find it extremely difficult to gain employment within their chosen field after graduating'.<sup>70</sup> However these explanations need to be kept in perspective. The reality is that students are increasingly concerned about social justice and corporate responsibility. Professor West's calculations, for example, show that 70% of all Blake Dawson Waldron summer clerk applicants inquired about the firm's pro bono commitment at their interviews.<sup>71</sup> More than this, junior lawyers and law students alike are beginning to demand firms' provide adequate pro bono opportunities.<sup>72</sup> This is confirmed by a managing partner of a large city law firm who observed:

It's a fact: Australia's budding young lawyers like working for free... The one question they have for firms like mine is reassuringly consistent: Do you have pro bono work?<sup>73</sup>

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<sup>68</sup> See Roselyn Melville, *My Time is Not a Gift to the Government: An Explanatory Study of NSW Community Legal Centre Volunteers* (2002) 8.

<sup>69</sup> John Corker, 'National Student Pro Bono Plan on Track', *Lawyers Weekly*, 11 June 2004, 20.

<sup>70</sup> Natasha Wallace, 'A Degree of Commonsense', *Sydney Morning Herald* (Sydney), 11 September 2002, 4.

<sup>71</sup> Roger West, 'Pro Bono: What Makes a Successful Pro Bono Scheme?' (2000) 38(9) *Law Society Journal* 60.

<sup>72</sup> *Developing your pro bono practice* (2004) *Lawyers Weekly* <<http://www.lawyersweekly.com.au/articles/71/0C01B271.asp?Type=56&Category=849>> at 6 June 2004.

<sup>73</sup> Ian McGill, 'Young Lawyers Good At Heart', *Australian Financial Review* (Sydney), 4 August 2000, 35.

It would seem that the increased importance attached to subjects dealing with legal ethics and professional responsibility has had a positive impact in this regard. Interestingly, the Senior Solicitor at one centre had, in a 'past life', worked as a volunteer solicitor for the Centre before being appointed in an official capacity. He also spoke of the importance of his legal education in shaping his community commitment:

The idea of volunteering flowed from the education I had at X uni which was slightly left of centre and was more community orientated than perhaps X (uni) was...at the time.

Another CLC indicated that two previous law student volunteers (now fully fledged legal practitioners) despite having moved on to 'bigger and better things' continue to give time to the Centre by sitting on its management committee.

That said, researchers have frequently warned against trying to draw overarching inferences in relation to volunteer motivations. Volunteer motivations can never be homogenous and motivations are likely to vary according to age, sex, socio-economic status, ethnicity and other variables. Whilst often socialised according to various professional norms and beliefs, this caveat is equally applicable to the field of law.<sup>74</sup>

The fact that some CLCs are receiving more applicants than they can absorb is not a situation that sits easily with CLCs. To the contrary all CLCs expressed a desire to utilise the law student further. However, scholars such as Melville have shown how the use of CLC volunteers is rarely a cost neutral exercise. In her study volunteers were said to be a productive resource only if provided with adequate supervision, training and support from paid staff. Given that most law students have minimal or no experience in poverty law type subjects, this is not surprising.<sup>75</sup> With many CLCs so drastically under resourced it is unlikely that they will be able to accept more students in the absence of university support.

All Centres indicated that firstly; they would welcome a more strategic relationship with UWS and secondly; enjoy the opportunity to share more of its resources. One Centre in particular said that it had been in discussions with the Head of School at both UWS and another law school in relation to establishing a formalised alliance. While both law schools expressed a 'keen interest' in the initiative, this enthusiasm was said to have 'drifted'. This interest was rekindled recently when the other university (ie not UWS) provided a firm commitment. As a more formalised agreement enters into force there may be limited scope for

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<sup>74</sup> The author is presently seeking ethics approval to distribute a survey to all law students assessing their attitudes to pro bono and just how important social responsibility is for them in choosing employment.

<sup>75</sup> Melville, above n 68, 11.

UWS volunteer law students. This is unfortunate in view of the fact that the Centre has been 'particularly impressed' with the cohort of UWS students coming through and who comprise the 'majority' of volunteers.<sup>76</sup> Naturally UWS law students are always welcome to staff other CLCs in the region, but it is necessary to note that distance is a decisive factor in influencing people's decisions to volunteer at CLCs.<sup>77</sup>

When asked why there had been a sudden resurgence in the level of interest in establishing clinical connections with his CLC, the respondent's answer was interesting. By no means the only reason he noted that most universities had already incorporated a clinical style programme into their degrees and there could come 'an embarrassing moment' for the universities that had not.<sup>78</sup>

The author has argued previously for the amalgamation of one of the CLCs in the Western Sydney region with the UWS School of Law. In particular it was envisaged that synergies and cross-fertilisation would lead to a number of benefits including: less expensive or heavily subsidised accommodation and infrastructure, heavily subsidised administrative outgoings, the ability to pool resources, access to academic expertise, the ability to tap into the student body as a volunteer base, not to mention providing a prime site for relevant and applied academic research. In a similar venture UWS successfully established a 'UniClinic' in which final year podiatry, osteopath and Traditional Chinese Medicine undergraduates provide members of the community with treatments at a substantially reduced fee under academic supervision. Discussions with the acting UniClinic manager reveal that the Clinic was never really conceived of as a profit-making venture but rather was considered a vitally important laboratory for the students and a positive demonstration of the University's commitment to community engagement.

For all the advantages implicit in such a model it is necessary to note that UWS officialdom have rejected it.<sup>79</sup> Like most universities UWS has expressed a desire to get more of its students participating in activities

<sup>76</sup> This may have a lot to do with the practical emphasis of the UWS law degree. See Sebastian De Brennan, 'UWS Too Far West To Get A Mention', *Lawyers Weekly*, 10 June 2004, 10.

<sup>77</sup> Melville, above n 68, 45.

<sup>78</sup> The respondent said that one of the universities had put out a document outlining the law schools incorporating legal education and the nature of those programmes. That document was discovered subsequently by the author. Within it, sixteen law schools are credited with offering these programmes. Conspicuously absent from that list is UWS and yet, it could be argued that Western Sydney needs programmes of this nature more than most other law schools on that list. See: Kingsford Legal Centre, *Clinical Legal Education Guide – Your Guide to CLE course Offered by Australian Universities in 2003 and 2004* (2004) UNSW <[http://www.law.unsw.edu.au/centres/klc/Clinical\\_Legal\\_Education\\_Guides.asp](http://www.law.unsw.edu.au/centres/klc/Clinical_Legal_Education_Guides.asp)> at 25 May 2004.

<sup>79</sup> In fact discussions revealed that a similar programme was mooted a number of years ago and went before the academic senate 'but fell on the issue of resources'.

that align educational objectives with social obligation.<sup>80</sup> However, UWS officials have pointed out that the 'Kingsford' or 'Monash' type model proposed above is simply too resource intensive and that UWS must seek alternative ways of fulfilling these commitments in a more economically sustainable way. Similar comments were received from the Community Legal Education Coordinator at one of the CLCs visited, who argued that such a model was:

resource ridden...I know the Kingsford model and similar models quite well. I studied them a bit but we would never have the resources to be able to meet that.

In one alternative arrangement the UWS School of Law in conjunction with the Public Interest Advocacy Centre has created a subject called 'Practicing in the Public Interest' in which law students receive academic credit for carrying out research projects. Although committed to the programme the coordinator of the programme at UWS has said that it is 'very demanding' in terms of resources and for this reason only five students can participate in any given semester. Professor Jeremy Webber, former Dean of Sydney University, has said of a similar programme operating out of Sydney University.<sup>81</sup>

We therefore have to subsidise these units, at a time when funds are short across the board. We have done so – indeed, we expended more on the PIAC project than we pay a visiting lecturer to teach a full postgraduate unit – although we ourselves receive no funding whatsoever to support the programme.

Of interest was the response of an eminent barrister who suggested that UWS should rally its alumni together if it wanted 'to pursue CLE (clinical legal education) programmes more seriously'.<sup>82</sup> Suggestions like this often overlook the predicament of younger law schools. UWS, for example, introduced a Bachelor of Laws in 1995. With most of its alumni only a few years out of law school (and probably still paying off their HECS debts!) the University is scarcely in a position to rally graduates to 'fundraisers' to assist in meeting the costs of innovative CLE programmes. Additionally, because of its geographical isolation relative to other Sydney Law Schools, it would seem that the lawyers from the large city firms would rather walk across the road to Sydney University Law School, or spend ten minutes getting to other city based law faculties, than drive one hour to visit UWS. Put squarely, the benefits of having a well-established alumni and a privileged geography<sup>83</sup> dictates

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<sup>80</sup> *Report of the National Pro Bono Task Force*, above n 12, Appendix F.

<sup>81</sup> Rose Liverani, 'Public interest law fires up students' (2001) 39(4) *Law Society Journal* 18.

<sup>82</sup> Private communication with Barrister at Law, 5 April 2004.

<sup>83</sup> On the importance of geography to achieving competitive advantage see Annalee

that certain law schools are better resourced than others.<sup>84</sup>

## Part D - Moving Forward: Conclusions and Recommendations

As a cornerstone to its efforts UWS has, in conjunction with the NPBRC, agreed to run a programme pilot based on a Canadian model which will be launched as Pro Bono Students Australia.<sup>85</sup> After working 'first hand' with the programme in Canada, the author has argued for more law schools to consider it.<sup>86</sup> It is submitted that the model provides an excellent model for law schools unable to fund fully fledged clinical legal education programmes but at the same time wishing to enhance access to justice in their communities.<sup>87</sup>

This programme will match law students who want to perform pro bono work with public interest and non-governmental organisations, government agencies, charities, tribunals and legal clinics during the academic year and university break. As part of this programme law students from UWS will conduct legal research, engage in legal drafting, provide public legal education, draft policies for organisations and manuals for their clients; and help organisations provide legal information and assistance to their clients. Crucial to this project is the idea that every UWS law student will be supervised by a lawyer. Specific benefits of the student driven corpus are manifold and include:

- 1) it inculcates a pro bono ethos in the law student even before he or she goes out to practice;
- 2) it is not overly demanding in terms of resources (in that it is based on students acting pro bono);
- 3) it potentially involves many more students than 'mainstream' CLE models;
- 4) it assists in resolving the dilemma that certain CLC's receive more student volunteers than they can actually absorb;
- 5) it brings a greater amount of centralisation to what has been described as a 'disparate' pro bono landscape;
- 6) it has a greater reach than traditional CLE models by incorporating charities and other social justice organisations;

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Saxenian, *Regional Advantage: Culture and Competition in Silicon Valley and Route 128* (1994).

<sup>84</sup> On related issues see Sebastian De Brennan, 'Don't Forget the West' (2004) 42 *Law Society Journal* 8.

<sup>85</sup> See generally Sebastian De Brennan, Pro Bono Special Report: Canadian Fix for Australian Pro Bono, *Lawyers Weekly*, 16 April 2004, 16.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

- 7) it is politically attainable inasmuch as it does not require any other public interest organisations to surrender their 'turf';
- 8) it preserves community responsiveness by operating out of law schools which are situated throughout the nation; and
- 9) it 'outsources' any risk away from the university towards the host organisation seeking to use pro bono law students.<sup>88</sup>

If the Canadian model is anything to go by it would seem that this programme is capable of making a profound difference in meeting unmet legal needs. Established in Canada in 1996, the programme has involved approximately 5000 students, with currently more than 1000 students participating through selected Canadian law schools each year.

Most importantly, in the survey fielded by the author in Western Sydney, approximately 75% of respondents' expressed an interest in becoming involved in a programme of this nature.

But no programme can do it all<sup>89</sup> and it goes without saying that if we are to give one of the fastest growing regions in Australia a law school to be proud of, then the legal profession must be called to action. Based on the research to date the author would proffer the following recommendations (by no means exhaustive).

First, for the law school to meet its mission *to be a law school that excels in education and research and values its students and staff*, UWS needs to be more entrepreneurial in trying to attract funding from private industry. While UWS has done an admirable job in making itself known to the region of Western Sydney, the evidence would suggest that this has not transmitted through to the larger city based law firms. It is these larger city based firms which are often in a better financial position to fund access to justice initiatives. It may be timely for UWS to send out some information to the larger city firms that provides an overview of the strategic priorities of the law school together with an invitation for these firms to offer contributions, either financial or in-kind. In doing so, the plight of UWS should be emphasised including its infancy relative to other Sydney law schools, its distance from the Central Business District, its lack of alumni and inability to tap into alternative reserves of funding, together with the significant legal needs of the region to which it is accountable. To assist in this task UWS should consider engaging the services of eminent Western Sydney practitioners. Better still, members of the judiciary, managing partners and other influential lawyers might consider putting up their hands to assist a law school in need? In short, UWS needs some advocates to champion its cause.

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<sup>88</sup> See generally Sebastian De Brennan, 'Rethinking Pro Bono: Students Lending a Legal Hand' (2005) 15 *Legal Education Review* 25.

<sup>89</sup> For all its benefits the Canadian model is not devoid of problems, many of which have been outlined by the author in *ibid*.

Second, whilst the interactions between providers of legal services and the University of Western Sydney are numerous they seem to be operating on an ad hoc and disparate basis. It would make sense for a competent UWS staff member to be designated as a nodal point for CLCs, local law firms and other justice providers wishing to collaborate on projects to meet legal needs of the surrounding communities (with a view to crystallising these informal relationships). Thus UWS could replicate some of the innovative programmes which have been brokered between CLCs and other innovative Australian law schools.<sup>90</sup>

Third, the law school must continue to foster research that is relevant and applied to the region it purports to serve. Impressively, the University currently publishes three refereed journals (a general law review, an elder law review and an international law review respectively) but it would seem that the region presents a whole host of legal issues relating to family law, criminal law, multiculturalism and its indigenous populations. Few regions in Australia would provide a better site for applied and relevant research than the heterogenous Western Sydney.

Fourth, nearly all survey respondents and interviewees indicated that they would welcome further law related events, conferences and professional activities to be hosted by the University. For example, an annual access to justice conference could be run out of the University in which interested stakeholders could interact and share ideas and strategies for meeting legal needs. Any financial outlay may be subsidised by soliciting sponsorships from law firms.

## Conclusion

This paper has unapologetically glossed over the philosophical definitional debate surrounding pro bono. Rather than trying to sort out what is authentic pro bono and what is not – surely it is more productive to examine the ways in which each one of us is situate in relation to the people whose barriers to justice we are trying to alleviate. In this sense the pro bono aspect of the paper has been practical in nature as opposed to theoretically driven.

The unavoidable conclusion from this project is that the size of the legal aid funding pool must be increased if legal needs are to be met more satisfactorily. The author is not so naive to expect that unlimited public funds could be devoted to legal aid, for clearly, economic realities militate against this. However, it was expected that the government might have committed more than it has in the 2005/06 Federal Budget.

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<sup>90</sup> For an excellent outline of the great diversity of student orientated clinical programmes see Kingsford Legal Centre, above n 78.

An increase in government funding for access to justice initiatives would act as a powerful sign to the many lawyers (and universities) performing pro bono work that the government is not simply interested in the area as a means of defraying some of the load on Legal Aid and CLCs.

Relevantly the Western Sydney experience confirms this finding. Interestingly, however, rather than playing the 'blame game', those interviewed provided a less pejorative appraisal of government than one might have expected. For example the director of one dilapidated CLC did not want to talk about the condition of the place in which she worked, or having a bigger office. Instead she spoke about the desire to extend innovative, though under funded, access to justice programmes. Although the interactions with these four CLCs cannot be imputed to the entire CLC sector, it seemed that the attitude of 'let's get on with things' reflected more than a concession that further government funding was unlikely to be forthcoming. Rather, it struck the researcher as a positive demonstration that CLCs were not in the business of asking for additional funding 'for funding sake' or complaining about how hard things were for them (despite having every entitlement to do so). Thus personnel from the four CLCs seemed desperate to foster more constructive relationships with governments, universities and the private sector alike. In this respect CLCs might be their own worst enemy, for in their benevolence they give comfort to those governments who believe that CLCs will continue to work for a minimal wages, in conditions that can only be described as testing, and without the resistance that would likely emerge in the private sector. What is perturbing, though, is that instead of rewarding and valuing these people for their efforts, the government takes the altruism of the Western Sydney CLC worker for granted.

The data obtained from four Western Sydney CLCs also provided some interesting insights into the volunteering patterns and motivations of law students, with the evidence overwhelmingly suggesting that despite impending HECS increases they continue to relish participating in student pro bono settings. It would seem that this is partially out of philanthropy and partly due to the competitiveness of the legal market. Disturbingly, the anecdotal evidence of more students applying for CLC positions than they can absorb was confirmed.

Also affected by cuts in government funding is UWS itself. Undoubtedly this will impact on its ability to meet its mission '[t]o be a university of international standing and outlook, achieving excellence through scholarship, teaching, learning, research and service to its regional, national and international communities, beginning with the people of Greater Western Sydney'.

To maximise its impact in the community, the School of Law at UWS is trialing a Pro Bono Students Australia premised on a Canadian model. However the university will need to be more entrepreneurial in attracting funding from private industry and engaging distinguished

members of the profession. To assist in this task it would make sense to appoint a charismatic contact person to act as a nodal point between the law school and the wider community. It would also be eminently sensible for the law faculty to embrace and cultivate research that deals with the legal needs of those in Western Sydney, namely family law; criminal law; the law as it relates to ethnic myriads; as well as the substantial indigenous community. Of course, most of these suggestions are matters of 'common sense' but it needs not be said that universities have, on occasion, had difficulty in arriving at common sense solutions (for all their academic expertise). Finally, there is a fundamental need to continue to lobby both the senior members of the legal profession as well as government to support the development of a vibrant law school in the region of Western Sydney. With exponential population growth in the region a present and non-receding reality,<sup>91</sup> the people of greater Western Sydney deserve no less.

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<sup>91</sup> Bill Randolph and Darren Holloway, *Shifting Suburbs: Population Structure and Change in Greater Western Sydney* (2003).