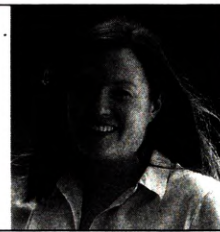


# Reflections on Life as a Pro Bono Secondnee



By Anna Stewart, Consumer Law Centre Victoria

**“Being committed to pro bono shows that a firm is socially responsible, creative in its use of resources, and has the professional interests of its employees at heart.”**

(Melanie Casley, seconded by Deacons to The Consumer Law Centre Victoria, March 2002-September 2002)

When asked the question ‘what do young lawyers want?’, many delegates at the Young Lawyers’ Assembly this year responded by saying that they wanted more opportunities to be involved in pro bono legal work. While historically many lawyers have participated in pro bono activities in one way or another, in recent years pro bono services have become increasingly structured and monitored – particularly in large commercial firms, where there are now pro bono co-ordinators and pro bono committees. The contractual obligations imposed by the Victorian Government, as of 1 July 2002, on the 33 law firms selected to be on its legal services panel, was arguably a major catalyst for firms to formalise and more accurately monitor their pro bono practices.<sup>1</sup>

One of the ways in which panel firms in Victoria can satisfy their contractual pro bono obligations with the Government is to participate in pro bono secondment schemes, such as the scheme administered by the Public Interest Law Clearing House (PILCH) and the Attorney General’s Pro Bono Secondment Scheme.

## What is pro bono?

There is no universally accepted definition of the words “pro bono”<sup>2</sup>, although the Law Council of Australia’s 1992 definition is generally accepted by the Australian legal community. This definition defines pro bono work as:

“circumstances where:

1. A lawyer, without fee or without expectation of a fee or at a reduced fee, advises and/or represents a client in cases where:
  - (i) a client has no other access to the courts and the legal system; and/or
  - (ii) the client’s case raises a wider issue of public interest; or

2. The lawyer is involved in free community legal education and/or law reform; or

3. The lawyer is involved in the giving of free legal advice and/or representation to charitable and community organizations.”

It is interesting to compare this definition to the definition adopted by the United States Pro Bono Institute in 2002, which is arguably wider and more flexible than the Law Council’s definition. The US definition has a greater emphasis on the creation of access to justice and extends to the:

“... activities of a firm<sup>3</sup> undertaken normally without the expectation of a fee and not in the course of ordinary commercial practice and consisting of:

(a) the delivery of legal services to persons of limited means or to charitable, religious, civic, community, governmental and educational organizations in matters which are primarily designed to meet the needs of persons of limited means;

(b) the provision of legal assistance to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; and

(c) the provision of legal assistance to charitable, religious, civic, community, governmental or educational organizations in matters in furtherance of their organisational purposes, where payment of the standard legal fees would otherwise deplete the organization’s economic resources or would otherwise be inappropriate.”

With language couched in terms of ‘civil rights’ and ‘civil liberties’, the US definition is perhaps not so applicable to Australia in its current political climate. Further, the US definition does not explicitly refer to law reform activities and community legal education.

## Public Interest Law Clearing House (PILCH)

PILCH has been operating an extremely successful and popular secondment scheme since 1995. It has grown in size over the last few years and now administers several other schemes, namely: the Homeless Persons Legal Clinic, the Victorian Bar Legal Assistance Scheme and the Law Institute of Victoria Legal

Assistance Scheme.<sup>4</sup> Secondnee solicitors at PILCH work alongside the permanent staff, and their main responsibility is to assess and refer applications for legal assistance to PILCH members (which include: law firms, barristers, corporate legal departments, community legal centres and university law schools). PILCH clients are generally: not-for-profit organisations, community groups and individuals who raise issues of public interest. The areas of law that are covered are extremely varied, and include: environmental and planning law, company law, copyright, trade practices and refugee law (PILCH was involved in trying to assist the Tampa refugees in August 2001). PILCH regularly hosts seminars on current topics of public interest, and plays a central role in the development of pro bono policy and services in Victoria.

Minter Ellison seconded second-year solicitor Penny Martin to PILCH from December 2002 to June 2003. According to Penny, “the ability to deal with a high volume of files and clients (whose matters are most often urgent and complicated), the ability to think on [your] feet and the confidence to independently make legal and practical decisions”, were just some of the benefits of the secondment.

## Attorney General’s Pro Bono Secondment Scheme

Launched in December 2001, the Attorney General’s Pro Bono Secondment Scheme is currently operating as a 12-month pilot, although it is hoped that at the end of the forthcoming evaluation phase the program will be continued. This scheme is administered by a steering committee, with representatives from Victoria Legal Aid (“VLA”), the Department of Justice, community legal centres (“CLCs”), the Law Institute of Victoria and law firms. Being a pilot, the scheme has endeavoured to include a variety of CLCs, with participation by both specialist centres – such as the Environment Defender’s Office, and generalist centres – such as Peninsula Community Legal Centre, as well as the Melbourne office of VLA. Centres were chosen to participate in the scheme primarily on a ‘needs’ basis and secondees were placed, where possible, in the centre of their choice. The first round of the 6-month secondments commenced in March 2002 and the second round commenced in November 2002.

Unlike PILCH, where secondees assess and refer matters but do not actually run the legal matter itself, secondees placed through the Attorney General's Scheme are required to run their own files (under the supervision of the principal solicitor at the CLC), as well as to appear in court, assist with the drafting of policy and law reform submissions, and to assist with community legal education.

*"As a junior lawyer I welcomed the opportunity to broaden my professional experience. Personally, there was immense satisfaction in achieving a legal outcome for a consumer who would otherwise be helpless."* (Caroline Cooke, Blake Dawson Waldron, seconded to Consumer Law Centre Victoria, March - July 2002)

According to Georgina Costello, who was seconded from Mallesons to the Western Suburbs Legal Service as part of the Attorney General's Scheme, "working at the Western Suburbs Legal Service was hard work in a different way to working at Mallesons.

Challenges included: working with interpreters, giving urgent advice about an area of law you've never seen before and facing a lack of resources, such as office space and online legal research tools."

Susan Mohar, seconded by Corrs Chambers Westgarth to the Environment Defender's Office between May and October 2002, said that she "had to become more self-reliant in terms of learning the law and answering queries....I learnt an amazing amount about planning and environmental law and I also learnt to balance the 'legal' parts of a practice, with the marketing and educational aspects that are required to be undertaken by the EDO."

Beyond fulfilling their pro bono obligations, firms have a lot to gain by seconding their young lawyers to CLCs, including PILCH. And there is no doubt that CLCs, and the communities they serve, benefit greatly from the added capacity of additional lawyers.

*"These legal centres perform a vital role in ensuring access to justice, often being the only means by which some people can access legal assistance. All our secondees have commented on the way in which their secondment has enhanced their practice of the law and the personal satisfaction that the secondment has given them."* (James Hains, pro bono coordinator of the Melbourne office of Deacons). ■

**1** Under the contractual arrangements with the Government, panel firms are required to provide pro bono legal services to causes or organisations approved from time to time by the Attorney General. The services provided by the firms are required to be equivalent in value to a percentage of the fees derived under the contract, or firms may pay a percentage to the State to be applied for pro bono services.

**2** Pro bono comes from the Latin phrase "pro bono publico", which means 'for the public good'. For resources discussing pro bono and public interest law see [www.nationalprobono.org.au](http://www.nationalprobono.org.au). You can subscribe to the National Pro Bono Resource Centre's e-newsletter at this site.

**3** This effectively means that the work performed by paralegals and support staff can be included as pro bono work. Note that the Law Council's definition only refers to work performed by a lawyer.

**4** For further information about PILCH see [www.pilch.org.au](http://www.pilch.org.au).

## Discussion Forum

### "Should all members of the legal profession be obliged to perform pro bono work?"

*"No. Imagine the sort of service that pro bono clients would receive from resentful anti-pro bono practitioners being forced to contribute to a compulsory pro bono scheme. What is required is better funding for government and community-funded free legal services. If firms that didn't meet a set of well-defined criteria were required to pay to subsidise free legal services, we could ensure that a decent standard of legal services was provided to all."*

**Solicitor, large commercial firm**

*"Should all members of the accounting, medical, building, plumbing, engineering, sports, acting, clerical, consulting and financial services professions be obliged to perform pro bono work? If 'yes' to all the above, then OK. Should the question be qualified to only apply to those who are successful/profitable/well paid above the 'mean' or 'average'? From a Christian perspective, despite an overall general Biblical exhortation to giving and generosity, it is also true that 'The worker deserves his/her wages' (Luke 10:7). The giving and generosity of pro bono work comes... from the heart, not from an obligation."*

**Solicitor, small commercial firm**

*"From a community's perspective, I would say that lawyers should be obliged to perform pro bono work as it improves the accessibility of justice to those who may not have the necessary resources to seek it... (and) personally speaking, it's a very rewarding experience. However...by obliging all lawyers to perform pro bono work, it may further dampen the demand for legal services in Australia. (e.g. why pay A for advice, when you can get it from B for free at your local community legal centre?)"*

**Law student**

*"Aside from the usual catch-cry of 'it only really works if the practitioner wants to do it', compulsory pro bono would put undue and disproportionate pressure on small firms and sole practitioners, who cannot spare the resources and who are already obliged to perform 'pro bono' work, not out of altruism, but rather by default. Not all practitioners have an accounts department... or... virtually limitless resources to pursue debtors. Many practitioners have to chase clients themselves. Often bills are not paid, whether the client cannot or just will not pay... Often it is due to helping the less fortunate who literally walk in*

*off the street and need immediate assistance. Is not agreeing to assist someone in these circumstances, without first verifying their capacity to pay, pro bono enough?"*

**Solicitor, small general practice**

*"One of the reasons why lawyers are so disliked by the community is because we are perceived to be a profession which seeks only to line its own pockets. Other occupations don't seem to attract the same level of antagonism, possibly because there isn't such a disjuncture between what the profession is supposed to stand for and how the profession actually operates. The law is meant to be concerned with justice and concepts such as equality before the law and access to impartial judgment. It is not meant to be just a body of knowledge that can be bought and sold to the highest bidder, or where those without the means to purchase expert advice and representation are rarely able to secure favourable outcomes. A profession-wide practice of providing some pro bono assistance in matters of clear public interest and where there is a genuine need would go some way towards redressing the imbalance between the idea and the practice of law."*

**Lawyer, government body** ■