

**Federation of Community Legal Centres
Response to the Department of Justice's 'Government Legal Services
Panels Pro Bono Commitment Issues Paper', December 2002.**

Thank you for the opportunity to respond to the Issues Paper. In relation to the specific questions outlined in the paper, the Federation of Community Legal Centres supports the responses made by the Pro Bono Policy Council of which the Federation is a member. We would also like to make some additional comments and emphasise the points of particular concern to Community Legal Centres.

We would firstly like to reiterate on earlier submissions to the Department of Justice that,

- pro bono policies will undoubtedly impact on Community Legal Centres.
- Pro Bono work has occurred within, and in conjunction with, Community Legal Centres since their inception.
- The breadth and diversity of pro bono at CLCs has not always been overtly stated.

While we welcome the announcement of an injection of funds into Legal Aid, the funding of Community Legal Centres and Legal Aid remains inadequate. Our concern is that Pro Bono schemes may impede a clear focus on the need for the development of adequate levels of funding for these services.

The distinction between pro bono services delivered by private law firms and the work of Community Legal Centres needs to be acknowledged. We encourage the fostering of relationships between law firms and CLCs. It is crucial that:

- the unique independence, philosophical framework and community base that legal centres have established be maintained.
- government funded legal services be strengthened to ensure effective working relationships with firms providing pro bono and
- to ensure that pro bono is directed where it is most necessary and where it will have the most benefit to the community.

Similarly we would like to reiterate our concern about the potential for the pro bono scheme to create a situation where pro bono work is attached to making profit (in the sense of obtaining government contracts) rather than providing free services as a commitment to access to justice. This is an important consideration. This large-scale scheme could ultimately impact on the culture of pro bono in Victoria and our understanding of pro bono.

In relation to the specific issues raised in the issues paper we make the following comments:

The definition of ‘approved causes’

We support the Pro Bono Policy Council’s assertion that this be kept broad. However, we do not wish to see pro bono being provided for work that does not clearly address the needs of the disadvantaged in the community or is not in the public interest. We agree with the Pro Bono Policy Council that pro bono work should be directed at promoting access to justice. It is however, important that pro bono services should be directed at assisting disadvantaged and marginalised individuals and groups to access justice, and/or be in the public interest.

We propose that pro bono be guided by principles (such as those of the Federation attached) rather than be bound and restricted by definitions and strict criteria.

An independent body to administer and evaluate aspects of the pro bono scheme

Reiterating on our earlier submissions, the government’s role should be to facilitate not control pro bono. To minimise government involvement in the direction of pro bono work it is conceivable that an independent body (suitably resourced and funded) could be utilised to determine what is an approved cause for pro bono. We need to consider that future governments may continue the pro bono scheme and it is a potential danger that governments could direct the resources of pro bono to areas of political interest which may not be in the interests of disadvantaged and marginalized individuals and groups.

Such an independent body could also collect information on what type of pro bono work is being done under the scheme for the purposes of evaluation.

We strongly support an independent evaluation of the pro bono scheme to commence in the first six months of the scheme and to be ongoing.

Existing pro bono should be safeguarded

If a firm is already providing services to a community legal centre or providing other pro bono services, that work should be counted for the purposes of the government scheme. Many pro bono arrangements have taken years to establish. It would be very damaging if firms decided to stop existing pro bono work in order to meet the requirements of ‘new’ work. We suggest that any pro

bono work that occurs as a continuation of previous work, after the commencement of the contract, be included as 'new'. It should not be necessary that this work be first initiated at this time.

In-kind support and gifts

We support the Pro Bono Policy Council's view on this issue. In kind support and gifts such as library resources, equipment and conference registration fees form valuable contributions to CLCs and other community organisations.

The Federation of Community Legal Centres also acknowledges that legal research, para-legal work, admin work and other 'non-lawyer' services provided pro bono from law firms are important for CLCs and should be included under the pro bono scheme.

Relationships between law firms and CLCs

It is crucial that law firms and CLCs have the opportunity to maintain existing relationships and also to build new and strong relationships for the future.

Relationships between law firms and CLCs, as stated previously, have formed organically over time. We are concerned about the potential strictures that the proposed structure placed across pro bono work can have; compelling firms to pro bono and focusing on certain types of pro bono has serious potential to create strain on these relationships. There is a need to ensure that the existing good will and positive working relationships be recognized and further developed.

The concept of pro bono, as involving a commitment to more equitable access to justice, human rights and the public interest, must be maintained and indeed fostered. CLCs are in a unique position to ensure that this work continues and is further developed. The work of CLCs in identifying and resourcing firms (in terms of briefing, explaining issues, interpreting for clients etc) is of vital importance to the success of pro bono policies.

VLA should not utilize pro bono lawyers.

The Federation's position is that pro bono is not a substitute for Legal Aid. It is the responsibility of Government to adequately fund Legal Aid. Pro Bono should not be used to supplement statutory legal aid services. Legal Aid is, in a sense, a quasi government body and it is not appropriate that the government direct pro bono in such a way.

CLCs on the other hand are independent community based organisations. It is a requirement of CLCs that they use volunteers. CLCs have also, to date, worked

closely with firms providing pro bono. This supports the appropriateness of pro bono from the current scheme being directed to CLCs.

Conflict of interest

As per our earlier submissions we are concerned about the potential reluctance of firms to take on pro bono work acting against the government and government bodies. It is crucial that measures be put into place to assure firms that pro bono efforts in such areas will not jeopardize the prospects of receiving tenders.

In conclusion the importance of pro bono policies necessitates ongoing consultation and collaboration between government and key stakeholders such as the members of the Pro Bono Policy council. For instance it is important that the Department of Justice work with and support the Pro Bono Policy Council to establish models and structures to ensure equity of distribution of pro bono across Victoria. Rural and regional communities (and outer metro to a lesser extent) are disadvantaged in terms of access. Similarly the Department can participate in and facilitate necessary dialogue around other issues such as commercial conflict.

We strongly advocate for a broad definition of pro bono. However, should a definition and criteria be established we would argue that, given the central role CLCs in pro bono activities in Victoria, it is important that CLCs be given a role in any decision making processes.

Yours sincerely,

Debbie Kirkwood
Policy Worker
Federation of Community Legal Centres

FCLC PRO BONO POLICY PRINCIPLES

1. **Protect Diversity and Existing Pro Bono Arrangements**

Pro bono work has grown and developed organically over many years through the efforts of the legal profession, legal aid providers and community players. This has led to a diverse range of pro bono arrangements that reflect a positive and healthy system in a politically plural society. Existing pro bono contributions need to be acknowledged and protected under government policies.

2. **Political Independence**

Pro bono work must be independent from political decision-making. Pro bono work contributes significantly to public interest test cases that address important issues of governance and human rights. By testing points of law and generating public discussion and dissent, pro bono work plays an important role in safeguarding our democratic processes and institutions. This pro bono work should not be subject to government interference.

3. **Voluntary Essence of Pro Bono**

Further pro bono work is by its nature a voluntary contribution by the legal profession. An attempt to control pro bono by the government fundamentally changes what pro bono is – it is no longer a voluntary contribution, underpinned by a commitment to community and social justice and promoted by professional ethics. Government tenders should take into account pro bono contributions of firms but should not prescribe particular contributions. Rather than adopting such a mandatory approach, pro bono should be grown by adopting indicative policies and a facilitation role.

4. **Strategic and Sustainable Approach**

Government needs to adopt a strategic and sustainable approach to growing pro bono. Clear and considered policies need to be developed that set best practice standards and policy principals. Policies need to provide a solid framework that is not susceptible to setting short-term priorities. The introduction of the mandatory minimum pro bono requirement in government tenders is a good example of the confusion and unintended consequences that are produced when definitions and processes are not strategically developed – the withdrawal of law firms from established pro bono partnerships and from the recently launched pilot secondment scheme due to the new provisions of the tender process.

5. **Partnership Approach**

Pro bono has been developed over many years by all players. Any approach to grow pro bono requires that these players are involved: Law Institute of Victoria, Bar Association, Community Legal Centres, Law Foundation of Victoria, Victoria Legal Aid, Victorian Council of Social Services. The government's role is one of facilitator: to bring together pro bono players, to develop policy and practice principals and to coordinate better outcomes. This approach recognizes that there is already a significant commitment to pro bono within the legal profession and significant need in the community, but that what is needed is better connections and linkage of pro bono supply and demand. PILCH for example is a model of linking demand and supply, as is the Youth Legal Service. Some of the policy work done by Voluntas helps articulate "good practice" and promotes a collaborative approach to growing pro bono.

Collaboration between the Bar and Law Institute pro bono scheme and Pilch again highlights both a new model and a commitment to collaboration between different players.

6. Pro Bono Not a Substitute for Legal Aid

The growing of pro bono does not detract from the government's responsibility to adequately fund legal aid. Pro bono work supplements, rather than replaces, statutory legal aid services. Without the infrastructure and framework provided by Community Legal Centres and Legal Aid, pro bono work would sit in a vacuum. In particular, Community Legal Centres play a vital role in identifying need and facilitating pro bono work.

7. Equity

The growing of pro bono must address issues of equitable distribution. Those people from rural or outer-suburban areas have more trouble accessing pro bono services. Those groups that are able to articulate their needs, network with the right people and develop an effective strategy are more likely to be successful in developing pro bono partnerships. There is a need to ensure that pro bono work is not concentrated in a few areas but is more equitably distributed to those in need.

8. Monitoring and Evaluation

A partnership to grow pro bono must undertake some monitoring and evaluation of changes and developments in pro bono work. It is important that strategies that aim to grow pro bono work, do not simply shift that work from one focus to another, or worse, diminish pro bono contributions through poor policy and strategies. Effective monitoring and evaluation will provide a basis for future policy and strategy development.