



**A Review of**

**Parramatta City Council's Social Enterprise Pro Bono Legal Panel**

**A Partnership with**

**The National Pro Bono Resource Centre and**

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## **1. Definitions**

It is useful to begin by defining the key concepts ‘Social Enterprise’ and ‘Pro Bono Legal Services’ in the context of this review:

### **Social Enterprise**

The definition of a social enterprise used by Parramatta City Council is a ‘social business’ that has the following characteristics:

- Social, environmental or cultural mission/objectives core to its purpose and focus;
- Limited distribution of profits – the majority of profits are reinvested in the enterprise and/or an associated social entity;
- Mixture of capital inputs – the enterprise is supported through a mixture of grant income/subsidised income and trading income, but must trade;
- Generation of social return in addition to a financial return, and a commitment to demonstrating this; and
- Favours democratic decision-making structures and seeks high levels of accountability to their stakeholders, rather than just to shareholders.

Social enterprises often have missions that relate to one or more of the following:

- Providing a service or a product that addresses an identified social, environmental or cultural need that is not being met by the commercial market;
- Creating or sustaining real employment opportunities for people with complex barriers to workforce participation; or
- Developing income streams that allow not-for-profit organisations to become self-sustaining or independent over time.

### **Pro Bono Legal Services**

Whilst there is no universally accepted definition of what is meant by pro bono legal services, ‘pro bono’ in the legal context generally refers to the provision of free or significantly reduced fee legal services to disadvantaged or marginalised members of the community or to organisations that assist those people. Pro bono work is seen as a lawyer’s professional responsibility and many law firms have developed pro bono programs as a response to unmet legal need in the community.

The National Pro Bono Resource Centre (‘the Centre’) has developed the following definition of pro bono legal services:

Giving legal assistance for free or at a substantially reduced fee to:

- (a) Individuals who can demonstrate a need for legal assistance but cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial hardship; or
- (b) Individuals or organisations whose matter raises an issue of public interest which would not otherwise be pursued; or
- (c) Charities or other non-profit organisations which work on behalf of low income or disadvantaged members of the community or for the public good;

Conducting law reform and policy work on issues affecting low income or disadvantaged members of the community, or on issues of public interest;

Participating in the provision of free community legal education on issues affecting low income or disadvantaged members of the community or on issues of public interest; or

Providing a lawyer on secondment to a community organisation (including a community legal organisation), or at a referral service provider such as a Public Interest Law Clearing House.

The following is **NOT** regarded as pro bono work:

Giving legal assistance to any person for free or at a reduced fee without reference to whether he/she can afford to pay for that legal assistance or whether his/her case raises an issue of public interest;

Free first consultations with clients who are otherwise billed at a firm's normal rates; legal assistance provided under a grant of legal assistance from Legal Aid;

Contingency fee arrangements or other speculative work which is undertaken with a commercial expectation of a fee;

The sponsorship of cultural and sporting events, work undertaken for business development and other marketing opportunities; or

Time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

## 2. Executive Summary

Parramatta City Council's (PCC) social enterprise program (the program) has been in operation for almost five years and is the first of its kind in local government in Australia. The program is a part of PCC's community capacity building approach, outlined in its strategic plan. In order to tackle social exclusion, PCC has adopted a strategic approach to nurturing social enterprises with a view to facilitating social, environmental and cultural outcomes for the region. PCC's has adopted this approach as the innovative responses to service delivery and social and environmental issues that social enterprises are known to generate are likely to provide unique opportunities that work towards the '*Parramatta Twenty25*' strategic objectives.<sup>1</sup>

The program provides development support to social enterprises from across the Parramatta region and has also contributed to the development of the social enterprise sector nationally. A number of partnerships have been established to increase the support available through the program, including the Pro Bono Legal Panel and a mentoring partnership with The Westpac Group. The program also distributes a grants funding pool of \$75 000 per annum (recently increased to \$80 000). The primary focus of the grants funding pool to date has been to enable business planning processes for emerging social enterprises, however the funding pool has just been restructured and now also includes an emphasis on attracting existing successful social enterprises into the Parramatta local government area.

In April 2010, PCC approached the Centre to see if the Centre could facilitate the establishment of a Pro Bono Legal Panel. The Centre in turn approached a number of law firms and the Arts Law Centre to gauge their interest in participating in the initiative. Six firms agreed to participate, and the panel was established as a pilot project in July 2010. The current members of the panel are: Arts Law Centre, Blake Dawson, Dooley & Associates, Henry Davis York, Phang Legal and Sparke Helmore Lawyers. The social enterprise program and referrals to the legal panel have throughout the year been managed by PCC's Community Capacity Building Officer Social Enterprise (CCBOSE).

Since its establishment, the services of the Panel were made available to the pool of social enterprises funded through PCC's social enterprise grants program. To date the pool has included 21 social enterprises that together have been awarded approximately \$400 000 over the past five years that the grants program has been available.

During the first 12 months of the panel's operation, five social enterprises submitted Expressions of Interest in seeking legal support to PCC's CCBSOE (with one of these

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<sup>1</sup> '*Parramatta Twenty25*' is PCC's strategic plan, developed in 2006. The plan can be found at [http://www.parracity.nsw.gov.au/data/assets/pdf\\_file/0004/9877/StrategicPlan2025\\_part1.pdf](http://www.parracity.nsw.gov.au/data/assets/pdf_file/0004/9877/StrategicPlan2025_part1.pdf)

submitting two matters<sup>2</sup>). Social enterprises were asked to complete a form, developed with input from PCC's Legal Counsel and the Centre, outlining their need for legal assistance and providing other key information. Where clarifications or additional information was needed, this was sought by the CCBOSE prior to distribution to the panel firms. Panel members then indicated if they were interested in taking up a matter for consideration. Once the firm had confirmed their involvement, the contact details for the social enterprise representative were provided so that the firm could make contact and begin progressing the matter. All of the matters received were matched with a firm. However, two did not progress – one due to the organisation choosing not to progress their social enterprise, and the other due to all parties agreeing that they were too early in the process for the requested work to be undertaken.<sup>3</sup> The five matters that were matched with a firm involved issues of insurance, incorporation, legal structure, risk management and contracts.

### **3. Review Methodology**

The review was conducted in two parts. The Centre contacted all panel members for an interview and an opportunity to provide feedback. PCC contacted those five social enterprises that had their matters progressed to a legal practitioner through the panel to get feedback and to gain an understanding of the operation of the panel from their perspective. A short questionnaire was provided to each social enterprise. The verbatim responses to the questionnaire are contained in Appendix 2 of this report.<sup>4</sup>

Findings of the review are discussed below under separate headings for panel members and social enterprises. Some discussion questions are inserted under relevant headings to provoke thought and facilitate discussion and possible policy development. The report then sets out possible future directions for the Panel and discusses the opportunity to expand the program into the Western Sydney and Central Coast regions, in partnership with Social Enterprises Sydney.

## **4. Review – Responses from the Pro Bono Legal Panel**

### *4.1 Operation of the panel and referrals*

All interviewed panel members were satisfied with the quality of the referrals, the presentation of legal issues in referrals, and the contacts from PCC's CCBOSE. As referrals throughout the year were limited, some panel members expressed the view

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<sup>2</sup> A list of these five social enterprises and a brief description of their area of operation can be found in Appendix 1 of this Report.

<sup>3</sup> This matter has since progressed and has been referred to a member firm.

<sup>4</sup> The verbatim responses are confidential. If this report is publicly distributed, the Appendix will be omitted. The responses to the questionnaire are discussed in general terms in chapter 5 of this report.

that regular contact and updates (quarterly) in the form of an email might be useful. Many had anticipated more social enterprises to have legal needs throughout the year, however were pleased that unnecessary referrals were not made.

#### *4.2 Issues with clients*

*“Watching a modern interpretive dance performed by my client was as foreign to me, as incorporation was to my client.”* Ern Phang, panel member

Several panel members reported having some issues with their referred social enterprise client. These ranged from difficulties in establishing and maintaining client contact and receiving instructions (nominated contact persons not responding to email or phone messages), or information on whether further advice was necessary or whether a matter could be closed, to that of too frequent contact: a referred client returning to their legal service provider for a multitude of legal issues without going through the referral process. One panel member also reported difficulties in communicating basic legal issues (i.e. incorporation) and its consequences to a client with no background in business or non-profit management in terms that were easily understandable for the client.

These issues highlight the need for managing client expectations by informing them of the types of services available throughout the referral process, to ensure that valuable services are directed at those who need them. Social enterprises may also benefit from community legal education sessions, in order to assist them in identifying legal issues and to better understand their responsibilities and liabilities.

Many law firms already provide legal education sessions for not-for profit organisations, and existing resources on regulatory obligations are readily available. However, social enterprises differ from not-for-profit organisations and charities as they can take a variety of legal forms and also have a variety of ‘starting points’ – for example, some result from one person’s vision and passion for the community, some start through an existing non-profit organisation, and others are established by business people wishing to apply their skills to a social purpose. In many cases those involved have limited understanding of legal issues.

**Discussion questions: As the program grows, would the social enterprises benefit from legal education on certain generic issues, e.g. incorporation and taxation? Would the panel members be interested in providing education sessions? What forms could the education take outside traditional information sessions? What differences are there between the information needed by social enterprises and that provided to ‘regular’ not-for-profits?**

#### *4.3 Definition of a social enterprise – policy and regulatory issues*

The definition of a social enterprise adopted by PCC for the purposes of this project (see page 3 of this report) is relatively broad, and is reflective of the approach generally taken in the social enterprise sector in Australia and also internationally. Some panel members expressed that they had difficulties placing some matters within their pro bono program due to the focus and activities of the social enterprise – particularly in the case of arts-related or culturally focussed social enterprises, or in matters where pro bono legal advice will contribute to generating profit (albeit for a social, environmental or cultural purpose).

On a more general level, some members expressed concern regarding the regulatory issues surrounding social enterprises and the difficulties of the social enterprise model fitting into current regulatory options for incorporation. These concerns raise an issue that is critical to the development of social enterprise activity across Australia.

As interest in social enterprise continues to grow the diversity of activity encompassed by the model is raising matters that require careful consideration. Central amongst these is the need to examine matters of legal structure. Social enterprise is a way of working, rather than a legal status. This makes them different from ‘regular’ nonprofits and also from ‘regular’ businesses in that they can operate through for profit, not-for-profit, cooperative and also hybrid legal forms (eg. involving trusts).

There is currently confusion about whether and how social enterprises can be supported (including in both government and philanthropic grant funding, corporate support programs – such as pro bono and mentoring programs – social investment activity, and procurement opportunities) because this issue has not been directly addressed.

One of the key benefits the social enterprise model offers is innovative responses to complex social and environmental issues. To keep the focus on innovation in this area it is important that the diversity of approaches that social enterprises take is encouraged.

**Discussion questions: Should pro bono be supporting the entire social enterprise movement or only aspects of it and if so, what should these aspects be? Is there a need for the pro bono community to be more broadly informed about social enterprises and their broader impact on the community?**

#### *4.4 Communication between panel members*

During the review interviews, some panel members raised the issue of communication between members of the pro bono legal panel. Some panel members feel they work in isolation, and felt that a forum for contacting other members would be useful, particularly as the issues that social enterprises face may be similar, especially with those social enterprises that have a similar social focus or are trying to achieve different social outcomes but through similar business models. This would facilitate information sharing and avoid unnecessary duplication of efforts.

**Discussion questions: Would a forum for contact be of interest to the panel members? What form would this type of contact/information sharing take – e.g. emails, calls, or a private social platform?**

### **5. Review – Responses from Social Enterprises**

All five social enterprises that received assistance from a panel member were asked to respond to a brief questionnaire regarding their experience. The Questions and verbatim responses are contained in Appendix 2 of this report.

#### *5.1 Operation of the panel and referrals from the other perspective*

All five social enterprises whose matters were successfully referred through the panel were happy with the service they received and happy with the outcomes of the pro bono legal work. Some social enterprises thought that local (Parramatta) firms may be more accessible than larger city firms. Some also raised the issue of having expectations outlined at the start as to the services to be provided through the panel or by a member firm.

The responses of the social enterprises highlight the need to manage client expectations, an issue also raised by panel members. Information regarding the type of services provided by member firms would assist the social enterprises in planning their own operations and resources regarding the outcomes of the legal advice they receive. Also the limitations of pro bono legal assistance need to be clearly communicated to facilitate this. This information could be collated by PCC's CCBOSE and provided to panel applicants at the time of matching with a panel firm.

### *5.2 Issues with legal service providers*

Most social enterprises were extremely pleased with the service they received from panel members. Some made comments regarding the time it took to place their matter or to receive advice. Whilst the comments may reflect the actual service provided, they are more likely to be indicative of the clients' misplaced expectations, or the fact that some matters took longer than others to place with an appropriate member firm. All social enterprises were happy with the outcomes of the assistance they received.

### *5.3 Understanding of the legal issues involved*

All five social enterprises indicated that their understanding of legal issues (such as choosing the correct legal structure, incorporation, insurance) had improved as a result of their involvement with the Panel. Panel members were praised for their efforts in communicating options in plain English, improving the clients' confidence in choosing their options and providing objective expert advice.

## **6. Identified Issues and Conclusions**

Although the legal matters referred through the program in its first year were limited, the review has highlighted some important issues, and the Centre will work together with PCC and the panel members to address these.

The overarching issue is to identify the unmet legal need arising in the social enterprise movement and see whether, and if so how, pro bono legal services might respond to that need. Traditionally pro bono legal services have been provided to not for profit organisations and charities that work to assist disadvantaged and marginalised members of the community. Some social enterprises may fall into this category, but others may not. Also this may change over time for an enterprise that becomes successful.

An issue that was particularly highlighted was the need to manage client expectations with regard to the nature of the legal services available from panel members, the process of obtaining legal advice and the possible limitations of that assistance.

Unsurprisingly persons managing social enterprises had little contact with the law of business before. Thus, the need for legal education on issues affecting social enterprises, particularly in the start-up phase, became evident in the review. Offering targeted legal education sessions may:

- assist a social enterprise to better understand the next steps in their development path;
- better identify when they have a legal issue and when it is appropriate to seek assistance;
- reduce the need for referrals regarding certain issues; and
- assist those running the social enterprises to be better managers.

This also may be a good match for pro bono lawyers who are often willing to provide this type of education supporting the many materials that already exist on relevant topics.

Firms will often consider the sustainability of an organisation and whether it can get legal help elsewhere before committing significant resources to assist it by providing direct legal services. This may mean that the emphasis of pro bono legal assistance for these enterprises should be on education, with direct requests for assistance left to those enterprises that have a firm business plan and some track record of successful operation.

There is clearly a need for a greater understanding of each sector by the other perhaps achieved more efficiently through group rather than individual sessions.

## **7. Future Directions**

### *7.1 Social Enterprises Sydney*

This section will briefly explain the opportunity that currently exists for the Panel to extend its involvement in program in partnership with Social Enterprises Sydney (SES).

SES is an emerging practitioner-led, membership-based social enterprise that will provide a range of activities to build the capacity of social enterprises across the Greater Sydney Region. It is based on the successful Social Enterprise London model and has been established in response to identified need in the region.

Its mission is to: support and promote the success of social enterprises, with a focus on connecting and developing practitioners.

SES is currently in the early start-up phase and once fully operational the aim is to provide a range of services to social enterprises, including training and coaching. SES also seeks to create a 'fertile ground' for social enterprise development and so will promote social procurement policy and practice, and also provide a strong advocacy function to support the development of the emerging sector.

SES has been incubated by PCC over the past 18 months, and is a separately incorporated Company Limited by Guarantee with a Board of five Directors. A copy of its Constitution is available on its start-up website ([www.socialenterprises.com.au](http://www.socialenterprises.com.au)) and can also be provided on request.

The first major step in establishing its independent operations has been made possible through funding secured from the NSW Department of Family & Community Services' Community Builders Fund. Two positions have been funded and are currently being recruited. The Western Sydney Coordinator will be hosted (initially at least) by Parramatta City Council, and is a three year funded position. The Central Coast Coordinator will be hosted by Wyong Council, and is a two year funded position.

The two roles will deliver a specific scope of work that includes the delivery of workshops, training, one-on-one coaching, peer-to-peer networking events, newsletters, and a mentoring program.

Through SES' activities there is an opportunity to extend the Panel activities, for those interested, into the Western Sydney and Central Coast regions. It is envisaged that a similar brokerage approach to that used currently would be put in place, incorporating the potential improvements identified through the review.

Volume of work would be managed through the brokering process, and if at any point demand is exceeding the capacity of the current firms additional firms could be sought to join the panel. SES will promote the firms' involvement through its activities, including listing them as partner organisations on its website.

This opportunity also draws attention to the need for a more robust approach to identifying 'genuine' social enterprises that is discussed above. As noted above, an approach that moves beyond relying on legal structure as an indicator of intent and impact is needed to foster social enterprise activity that is innovative and meets the potential of the model to respond to complex social and environmental issues.

1.11.2011

National Pro Bono Resource Centre

## Appendix 1 – A list of social enterprises that received assistance through the Pro Bono Legal Panel

Social Enterprise	Description	Beneficiary Focus
Food Connect Sydney	<p>Connecting local farmers to city folk through an organic fruit and veg box subscription service. Food Connect Sydney's vision is to be a leader in making ethically grown food from local farmers accessible to any household in Sydney. Food Connect Sydney buys direct from local organic and chemical free farmers and delivers food boxes to a local host or "City Cousin" where subscribers come once a week to pick up their pre-paid box. Fruit and Veg from Food Connect supports farming and local communities as it is: Fair - 40c in every dollar goes back to the farmer; Organic - 100% of the produce is certified organic or chemical free; Local - average food miles of around 200km; Direct - 90% of the produce is bought direct from the farmer; Community driven - Local communities come together at their City Cousin.</p> <p>Food Connect Sydney is based on award winning Food Connect Brisbane who have been trading for over five years and deliver 800 boxes per week.</p>	Farmers, community, staff
Mars Hill Cafe	<p>To be a second lounge room in the community that supports arts &amp; music, providing work experience, employment, volunteer opportunities, excellent training, friendship, and the best cup of coffee and conversation in Sydney. Providing safe space for individuals in the community regardless of personal success or marginalisation to pursue artistic expression, volunteer involvement, work experience, hospitality training and socialisation across a wide sampling of the community. This allows for everyone to have real experiences and interactions that are not tainted by labels such as normal, successful or marginalised.</p>	Local youth and young adults who have suffered from long term unemployment, difficulty in finding employment, broken family situations, disconnection from community, or lack of opportunity to contribute to community.
youMove	<p>youMove's cultural mission is to position the company as the state's premier youth dance company for emerging dance artists in their first five years of professional practise. In achieving this mission youMove has created high quality employment opportunities for dance graduates such as the up and coming presentation of Thinking About Forever, as part of the 2011 Sydney Festival (as well youMove has offered 5 young dancers from the Department of</p>	Emerging dance artists: aged 18 – 26 yrs, high school students, Western Sydney GP, CBD general, tertiary dance students, independent choreographers.

<b>Social Enterprise</b>	<b>Description</b>	<b>Beneficiary Focus</b>
	<p>Education's Western Sydney's Regional Dance Camp to perform in this project), a new commissioned work for the Sutherland Shire Council's Cronulla Beach 2011 Australia Day Festival. As well the company continues to deliver robust and potent education programs for young people in the Western Sydney Region such as the Campbelltown Arts Centre Student Series, in which youMove has presented for the past three years and will continue to be involved with another planned in 2011. As well youMove has presented many education workshops via Western Sydney Dance Action since its inception in January 2009. These workshop series have provided both performances and participatory workshops for hundreds of Western Sydney High School students.</p>	
Circus Solarus	<p>Circus Solarus works with NGO's, local councils, arts organizations and museums to build their capacity to achieve their social aims through working with the community on arts based community cultural development projects. Its primary aims are to work with people to tell their stories and also to work with other organizations on environmental education programs. It endeavours also to use recycled or recyclable materials where possible in its projects and to reduce its environmental impact. Circus Solarus' aim is to develop models that put skills into the hands of the people it works with, to mentor emerging artists and performers so they will also work with the community and train community workers to work with their target groups using the arts.</p>	Refugee and migrant groups, youth, community development projects, environmental festivals and education, schools.
ICE	<p>ICE works with communities and creative producers in Western Sydney to create media, art and culture. It amplifies artists' and communities voices to build resilience, autonomy and infrastructure, and to enhance quality of life. ICE provides professional opportunities in sustainable arts and cultural activities, with a focus on digital media, powered by the explosion of creative energy currently occurring in Sydney's west.</p>	Disadvantaged, culturally and linguistically diverse, migrant and refugee communities, Aborigines and Torres Strait Islander people from and living in Western Sydney, young people in Western Sydney, emerging and developing artists (particularly from culturally diverse and Indigenous backgrounds).