

**A New Chapter for Pro Bono  
“Now is the time for in-house lawyers to get involved”**

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I want to advocate today on why **now** is a very good time for in-house lawyers to develop coordinated and structured pro bono programs.

As Mark Twain: said, “To do good is noble. To tell others to do good is even nobler and much less trouble”

So my job is quite easy. Your job does require some effort and planning but the good news is that there is plenty of support.

My comments today are based on the limited Australian expensive and particularly the growing US experience where commitment to in-house pro bono has developed considerably over the past ten years. Gregor Husper, Director of Referral Services at PILCH VIC will then talk about opportunities and support that exist in Victoria.

While we have some of the best practice pro bono in the world and PILCH VIC is a best practice pro bono clearing house, one area where we have lagged behind the US is in the development of in-house pro bono. In the US the PBI started the Corporate Pro Bono Project ten years ago albeit only with a handful of companies. The Corporate Pro Bono Project now has over 100 signatories including a number of companies that operate in Australia and some who are here today such as Microsoft, HP, Lexis Nexis, McDonalds, Shell, Symantec, Accenture.

**The Australian Experience**

In Australia, there have been three main barriers to the growth of in-house pro bono

- Practising certificates
- PI insurance
- Lack of culture (that includes perceptions and realities about lack of time and accessibility of appropriate legal work)

**Practising Certificates**

Corporate Practising Certificates (for those states that had them) typically only authorised the holder to provide legal advice on behalf of their employer. That is no longer the case in any State of Australia. Policy changes occurred in NSW and Queensland in 2010 and Victoria has now made appropriate changes with the recent passage of the amendments to the *Legal Profession Act 2004* and we thank the Victorian Government and parliament for that.

The National Legal Profession Reform Bill, when it becomes law, will expand this further by providing that an Australian practising certificate will authorise the holder to engage in legal practice as a volunteer at a community legal service, or otherwise on a pro bono

basis<sup>1</sup>. This will confirm the position nationally for in-house lawyers but also provide a free or low-cost practising certificate for career-break or retiring lawyers who want to do pro bono legal work.

Importantly all lawyers providing legal advice and services to government agencies and related statutory authorities will be required to hold a practising certificate<sup>2</sup>. This will provide a much better platform by which government lawyers are authorised to do pro bono legal work.

So the regulatory system for practising certificates in all States and Territories is now 'pro bono friendly' which is why now is a good time to develop your pro bono program.

I would like to acknowledge the important work of DLA Piper, ACLA, PILCH (VIC) and the National Pro Bono Resource Centre in successfully advocating for these changes.

### **Professional Indemnity (PI) Insurance**

This has primarily been a barrier only for those in-house lawyers who want to undertake pro bono work on their own behalf as individuals or as part of a program that doesn't have its own PI insurance. If the work is being done through a community legal centre (CLC), within a law firm pro bono program, or on some of the projects coordinated by pro bono clearing houses<sup>3</sup>, PI insurance for lawyers working on the project will already exist.

To address the PI insurance barrier the National Pro Bono Resource Centre with assistance from DLA Piper, the NSW Law Society and insurer, Law Cover set up the National Pro Bono Professional Indemnity Insurance Scheme ("**the Scheme**") first launched in NSW in July 2009 but I have the pleasure of launching the Scheme today in Victoria, its terms and conditions having been approved by the Victorian Legal Services Board on 14 May 2012 as an appropriate PI insurance policy for corporate legal practitioners under the new amendments to the Act<sup>4</sup>.

The Scheme provides PI insurance cover without charge to lawyers and paralegals who wish to work on an approved pro bono project. Projects are approved by the Centre based on broad definition of 'pro bono' used by the Law Council of Australia save that the work must be done without charge to the client, not for a reduced fee. 13 projects have been approved so far, 11 in NSW. These projects have involved 40 lawyers to date.

Some national corporations said to us that we would like to roll out a pro bono program for our lawyers nationally and so we will wait for the changes in Victoria. Well this happened thus providing another reason why now is the time to get started.

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<sup>1</sup> Clause 3.3.7(5) of the Legal Profession National Law 31 May 2011.

<sup>2</sup> National Legal Profession Reform Project, Consultation Report, 14 May 2010, p. 10.

<sup>3</sup> Another example of a project with its own PI insurance arrangements is the Homeless Persons Legal Service run in NSW by PIAC.

<sup>4</sup> Terms and conditions of policy approved under s.3.5.4A of the *Legal Profession Act 2004*.

The application process is simple. I have included copies of the application form on your chairs. Once a project is approved all lawyers and paralegals who work on the project are covered, with names being provided to us in six-monthly returns.

The Scheme also provides a special National Pro Bono Project letterhead to facilitate individual lawyers to undertake the work and to make clear that their employer is not providing the legal advice. Two examples of approved projects are the legal work for the Brainchild Foundation, a charity that assists children with brain tumours, being done by lawyer Peter Feros from Flight Centre in Brisbane and Westpac lawyers providing advice to a series of not-for-profits in Sydney.

### **Lack of Culture (including perceptions and realities about lack of time and appropriate work).**

Culture grows from a better understanding about why as lawyers we do pro bono work and why law firms, corporations and government agencies or departments should support that activity. From the US experience we can say that the culture that supports a pro bono program must have support from the top (CEO and General Counsel).

For individual lawyers it's an ethical professional responsibility. In the UK they simply say, "It's part of being a lawyer". Our surveys show that 'personal satisfaction' is the most cited reason for doing pro bono leading to one of my favourite phrases, that of 'Pro Bono Therapy'. If well managed and coordinated pro bono work can be very enjoyable and satisfying work in the overall context of a commercial lawyer's life.

For law firms it's a mix of motives. There are the altruistic motives held dearly by some partners. Others need some of the business case arguments to convince them and I suspect that it is the same if not more so in corporations. Many of the reasons that underpin the move to Corporate Social Responsibility ("CSR"), which has become an increasingly significant and powerful phenomenon in Australia, also provide an important context and driver for in-house pro bono even though the main rationale for pro bono comes from a **professional** rather than a **corporate** responsibility source.

Before I go into business reasons why in-house teams should do pro bono work, I want to talk about government lawyers.

### **Government lawyers**

Government doesn't have CSR programs – its duty is to act in the public interest and be accountable for the expenditure of taxpayer's money to deliver services.

So not all of the reasons why corporate lawyers should do pro bono apply to government lawyers. However the key reason, that is **supporting each lawyer's professional aspirations**, remains and is one that government should support as part of its employment and professional development strategies. Many of the business case reasons do apply but within government understandably there is likely to be a more conservative approach.

I would like to provide two examples. . The Cth AGD has a guidance note that supports lawyers doing pro bono work through indicating that Time Off In Lieu (TOIL) or flexitime can be used to do pro bono work and limited AGD resources can be used to support this

work. The policy provides for a voluntary Register of Pro Bono work so others in the Department can easily obtain information about what others are doing.

The other example is the Australian Government Solicitor (**AGS**) who have been a government business enterprise since 1999. AGS have a very active pro bono policy and are a signatory to the National Pro Bono Aspirational Target and Statement of Principles. They have a national pro bono coordinator who is happy to talk to other government departments about pro bono.

### **Business case reasons for in-house pro bono**

The starting point I like is that the well being of the corporation cannot be separated from the wellbeing of the community in which its employees live and work. This idea underpins CSR and importantly focuses on communities. It can lead a corporation to look at existing community programs with which it is involved and seeing whether the addition of legal support might enhance that relationship

Five key business case reasons for developing in-house legal pro bono based on US and Australian experience are:

1. An increase in staff satisfaction and retention – it provides a wider use and development of in-house lawyer’s legal skills.
2. It leads to better relationships, in particular better relationships with law firms and community but maybe also with clients and government. Working together on a pro bono project enables each to broaden their interaction with the other. Law firms have become sophisticated about how pro bono work is done and so pro bono clearing houses and firms are a great source of support in establishing a program. E.g. Westpac and G & T, HP and Ashurst, Telstra, ASIC and Mallesons.
3. It provides a tool to build the legal **team** and improve the perception of it within the corporation. It provides a vehicle to break down the view of legal being a “necessary evil”. Legal can be seen as problem solvers and skilled professionals who add value to the company.
4. It provides an opportunity for your lawyers to interact with other members of the profession. As an in-house lawyer you can feel a bit removed from the cut and thrust of everyday lawyering. The interaction with other practising lawyers enhances professional development.
5. It makes a contribution to the triple bottom line. Studies have shown that corporations that are more responsive to their individual employees and communities do better in the longer term.

### **Lack of time and which areas of law and practice?**

A question I would expect is, ‘how do we make the commitment and live up to it?’ The answer is, you need finite, time limited and predictable opportunities. You need compelling opportunities to enthuse your team members. The experience of others is

the way to make this happen is work with partners. The unequivocal experience seems to be that partnering provides invaluable support.

Following on from the idea of helping the community within which the corporation's employees live and work, and for those who are otherwise likely to miss out on legal support, then programs that address the needs of children, the elderly, the homeless, the detained might be what comes to mind. And the good news is that there are pro bono programs in these areas where your lawyers may be able to help but they will need training and orientation to the clinics and systems that provide these legal services. The good news is that training and mentoring is available for many of these programs.

But do please think laterally about the existing skills and experience of your lawyers be that in governance, tax, IP, employment law, maybe even migration law as the Microsoft lawyers did in the US who went on to establish a program focused on unaccompanied immigrant children leveraging on the existing knowledge of their lawyers about immigration laws used regularly to hire talented people from around the world<sup>5</sup>. In Australia a good example is the number of in-house counsel who have worked with the Arts Law Centre using their existing contract and IP skills.

## **Conclusion**

### **My main tips would be**

You need support from the top – that is from the General Counsel and the preferably the CEO. Partnering with a law firm with a strong pro bono practice will provide invaluable support. Partnering with a strong pro bono clearing house (such as PILCH VIC or QPILCH) and/or a community legal centre that has a strong well managed project (such as the Arts Law Centre or the National Children's Youth Law Centre) will also provide invaluable support.

The broad pro bono experience suggests that all programs need to offer variety to ensure participation. That is variety in areas of practice and in location. Some lawyers may be motivated to travel to attend clinics or meet clients. Others may prefer to provide assistance and advice from their own desk. Programs exist and can be developed that provide both opportunities or a mix of both.

Care and attention needs to be paid to the program beyond its establishment in order to maintain impetus and commitment. Legal work should be done to the same standard as paid work and managed accordingly. With possible conflicts, a clear policy from the outset is important although if you choose programs and projects carefully conflicts are not likely to arise.

So finally thanks for making my job easy today, that is attending so I can encourage you to develop your pro bono legal culture and remember there is a lot of support to help you develop satisfying programs and now is definitely a very good time to take action.

A list of **further resources** and links can be found on the dedicated in-house pro bono webpage of the National Pro Bono Resource Centre at <http://www.nationalprobono.org.au/page.asp?from=8&id=313> .

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<sup>5</sup> See <http://www.womensrefugeecommission.org/blog/978-microsoft-blog> for further information.