



Précis Paper

Starting and Maintaining a Pro Bono Program

John Corker and Sarah Morton-Ramwell discuss best practice in pro bono work, and how firms can develop a strong pro bono culture and practice.

Discussion Includes

- Definition of "pro bono" work
- Why do lawyers become involved in pro bono work?
- Opportunities for pro bono work in Australia
- Resources for pro bono work in Australia
- Best practices for pro bono and creating a firm-wide policy
- Tips for firms seeking to grow their pro bono practice
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Starting and Maintaining a Pro Bono Program

1. In this edition of BenchTV, John Corker (CEO, Australian Pro Bono Centre – Sydney) and Sarah Morton-Ramwell (Partner, Ashurst – Sydney) discuss how firms can start and maintain a pro bono program. This interesting presentation encompasses the definition of pro bono work, the types of opportunities available in Australia, and tips for building a strong pro bono culture and practice, as well as relationships within the community.

Definition of "Pro Bono" Work

2. "Pro bono" comes from the Latin phrase *pro bono publico*, which means "work for the public good".
3. A number of definitions of "pro bono" are used in Australia, however the most widely used definition was created by the Australian Pro Bono Centre for use in the National Law Firm Pro Bono Survey and the National Pro Bono Aspirational Target. That definition is as follows:
 1. 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;
 2. Conducting **law reform and policy work** on issues affecting low income or disadvantaged members of the community, or on issues of public interest;
 3. 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
 4. Providing **a lawyer on secondment** at a community organisation (including a community legal organisation) or at a referral service provider such as a Public Interest Law Clearing House.
4. Mr Corker explained that this definition is very specific in order to enable proper assessment of pro bono hours under the National Pro Bono Aspirational Target (which sets a target of 35 hours of pro bono work per lawyer per year), and in order to hold law firms accountable. The essence of the definition is that it is legal work, and not community work.

5. Ms Morton-Ramwell indicated that definitions of pro bono will vary from firm to firm. At Ashurst, as a global firm, international definitions have been taken into consideration. Ashurst's pro bono definition is:

Legal services provided free of charge that go to marginalised and disadvantaged people of limited means; the not-for-profits and social enterprises that support those people; and matters of public concern or broad community concern.

6. She further explained that pro bono is both an ethical and a professional responsibility, and an accurate definition is necessary to educate lawyers across the firm. At Ashurst, pro bono is seen as a stand alone legal practice, the same as any other legal practice. Corporate responsibility, on the other hand, is an important engagement program, looking at areas such as volunteering, reconciliation, non-legal engagement and the environment. The two areas work closely together in order to provide holistic support to community partners.

Why Should Lawyers and Law Firms Get Involved in Pro Bono Work?

7. There are two key reasons why lawyers and law firms should become involved in pro bono work: personal responsibility and a business case.
8. Individually, lawyers become involved in pro bono because it is their personal professional and ethical responsibility, and because of the inherent intrinsic value of doing work of this nature.
9. Outside of these personal motivations, there is a strong business case for firms to support individual lawyers in doing pro bono work. Ms Morton-Ramwell listed the following rationales:
- *Human resources:* There are increasing recruitment benefits in having a strong pro bono practice as young lawyers express interest and concern in social justice issues and wish to participate in pro bono work at a firm. Once working in a firm, a strong pro bono practice helps to retain young lawyers by ensuring that they consider that the firm's values match with their personal values.
 - *Learning and development:* For junior lawyers, pro bono work is an excellent way to develop skills and confidence and have opportunities working with clients. In pro bono matters, junior lawyers can have greater responsibility and exposure to clients than they might in commercial matters. Pro bono can also be tailored to others, and development opportunities exist at more senior levels of legal practice also.

- *Business development:* By developing a strong reputation in pro bono, a firm can market itself well in pitches and tenders, and demonstrate that it shares values with its commercial clients. A firm can also involve clients in pro bono matters, a way of adding value to their relationship with those clients.
10. Mr Corker noted that there is a trend towards questions being asked about pro bono practices in pitches and tenders. Ms Morton-Ramwell agreed with this point, and indicated that she would expect to receive questions on this issue as well as wider corporate responsibility. It was therefore important to have good record keeping of pro bono involvement. Moreover, a strong program, that lies within the culture of the firm and is not simply about marketing, is crucial.
 11. More and more, government at various levels have schemes in place for encouraging pro bono, the first in Australia being the Victorian scheme that was introduced in 2002. At the Commonwealth level, the government requires firms of more than 50 lawyers to be signatories to the National Pro Bono Aspirational Target, and smaller law firms must state a pro bono target and report back in order to be considered for federal government work.

Opportunities for Pro Bono Work in Australia

12. Mr Corker explained that firms must be pro-active in seeking out pro bono opportunities. As a result, firms should invest resources into looking for pro bono opportunities, such as giving a lawyer fee relief in order to allow them to focus on developing a pro bono program.
13. There are many pathways to pro bono. In Australia, key opportunities for pro bono include:
 - Pro bono clearinghouses, which exist in every state and territory in Australia (e.g. Justice Connect in NSW and Victoria and QPILCH in Queensland).
 - Law societies in every state have pro bono referral schemes.
 - Working with community legal centres (over 200 in Australia, some specialist and some generalist).
 - Existing pro bono clinics, such as the Homeless Persons Legal Clinics, Cancer Council Legal Clinics, and Salvos Legal.
14. Mr Corker indicated that a firm should know its staff and seek to discover what interests and contacts they may have in the community. Engaging a firm's lawyers is crucial to a successful pro bono practice, and it is important to find out what the lawyers are passionate about, what skill sets they wish to use and develop, and what contacts they may already have, such as through existing volunteering.

15. Ms Morton-Ramwell added that a firm should consider where the areas of need lie, and where the firm can provide skills and resources. As a pro bono practice develops, it is best practice to have a few areas of focus in order to develop long term relationships and build expertise. Once the firm has narrowed the scope for its pro bono work, it can become very pro-active in seeking opportunities in those areas, and can become a specialist in those areas of law through good training, either provided by community partners or internally.
16. One issue raised by Mr Corker is the consequence for people who do not fall within the focus areas of a firm. For this reason, some firms have shied away from developing specific areas of focus and instead have a general "access to justice" approach, taking on anyone who comes through the door who has sufficient need. Ms Morton-Ramwell explained that Ashurst's approach is flexible, and the practice is ultimately about assisting those who are the most marginalised and disadvantaged. Some prioritisation is needed in order to deal with the limited time and resources available to the firm, however the aim of the focus areas is not to exclude those in need or emerging areas of need.

Resources for Pro Bono Work in Australia

17. The Australian Pro Bono Centre has developed resources over the past 14 years which are available on their website (<http://probonocentre.org.au/>). Their flagship publication, the Australian Pro Bono Manual, will shortly be updated, along with a companion publication, What Works in Pro Bono Partnerships. These are substantial resources that try to cover key areas regarding developing and maintaining a pro bono practice.
18. Other resources include the websites of the various clearinghouses, community legal centres, and other key organisations in the community, including the Public Interest Advocacy Centre in NSW and the Human Rights Law Centre in Victoria.
19. Another key resource is the people in the pro bono sector. Australia has a strong collegiate culture amongst the pro bono providers in law firms, and the firms are very collaborative and strategic in developing pro bono. Ms Morton-Ramwell noted one particular example of this culture, specifically the Coordinated Legal Services Delivery Model in NSW, in which firms have divided and taken responsibility for the various regions of NSW in order to avoid overlap or gaps in legal service delivery. This collaboration has extended to the legal assistance sector, including Legal Aid NSW, the Aboriginal Legal Service and community legal centres, as well as local practitioners in the area.

Best Practices for Pro Bono and Creating a Firm-Wide Policy

20. In 2016, the Australian Pro Bono Centre published guidelines for best practice in its publication "What Is Best Practice in Pro Bono?" Although a disputed area in Australia where it was difficult to reach consensus, the Centre's guide outlines the following elements of best practice in pro bono:
- Strong social justice and pro bono culture supported by management;
 - A dedicated pro bono leader (within a reasonable sized law firm);
 - Broad awareness of the pro bono practice within the firm;
 - Broad engagement of staff and appropriate training;
 - A written pro bono policy and strategic plan;
 - Pro bono legal work being done to the same standard as commercial work;
 - Adequate crediting and recognition of pro bono work within the firm;
 - Setting a firm-wide annual pro bono target and budget;
 - Developing relationships with community partners; and
 - A strategic risk management plan, including accurate record keeping and regular evaluations.
21. The fundamental question is how pro bono is valued and perceived within a firm. Ms Morton-Ramwell explained that at Ashurst, pro bono is considered a core legal practice and therefore the work is treated the same as commercial work. This includes counting hours towards bonuses in the same way, the intake procedures (including conflict checks) are the same, and there is the same expectation of quality and supervision.
22. Mr Corker suggested that in developing a pro bono policy, it must be recognised that there is a growth path. The growth path in developing a pro bono practice will vary a lot between firms, but it is important to establish a good pro bono policy to start with, which must be inclusive of the people in the firm and agreed upon by the management. There should be a diversity of pro bono offerings within a law firm to attract different lawyers' interests.

Tips for Firms Seeking to Grow their Pro Bono Practice

23. Ms Morton-Ramwell and Mr Corker provided the following suggestions for firms seeking to grow their pro bono practice:
- Don't underestimate the use of "champions", that is volunteer lawyers within the firm who are the eyes and ears of the firm on the ground, and who will understand capacity, passions and interests. These champions are also excellent representatives of the firm, who will build relationships and bring back ideas for pilot projects.

- A good communication strategy is necessary. Pro bono is voluntary, and therefore it is important to influence and persuade people to participate. Communication with the client or potential client is also key, as there can be large cultural differences between a law firm and a community organisation, and it is important to understand the context within which a client lives and their legal issues arise.
 - Relationships are key – both within the firm and with community partners. Both clients and community partners need to feel comfortable in contacting pro bono lawyers and a good working relationship allows for brainstorming of systemic responses to problems.
 - Start small, and look for win-win situations. Once good relationships within the community are established, a firm can move towards a higher level of specialisation.
24. Both presenters noted that it takes time to build the necessary relationships and specialisations, and it is an ongoing project.

Examples of Individual and Systemic Pro Bono Work

25. Examples of pro bono work from the Ashurst program include skill-based pro bono work, such as employment lawyers working on employment law-related pro bono matters, or governance work done by the corporate team. In addition, Ashurst uses its global reach to deal with large systemic and research issues. Cross-border pro bono work includes anti-trafficking and anti-slavery work in Asia. At least half of Ashurst's practice is also about helping individuals, primarily through legal clinics and secondments, including homeless and women's shelters and a secondment to the North Australia Aboriginal Justice Agency.
26. Mr Corker provided the following individual examples of pro bono work completed by law firms:
- Assisting homeless persons who have incurred fines for travelling on public transport without tickets;
 - Pursuing citizenship for people in Australia on temporary protection visas with HIV/AIDS;
 - Working on elder abuse cases through the Seniors Rights Clinic; and
 - Wills, Powers of Attorneys and early access to superannuation for people with cancer through the Cancer Council Legal Clinics.
27. As well as assisting individuals, law firms have contributed to systemic change in the area of public transport fines for homeless people, by collecting individual cases to help effect

policy changes by the railways and law reform, particularly in Victoria, resulting in discretion for magistrates to waive fines.

BIOGRAPHY

John Corker

CEO, Australian Pro Bono Centre – Sydney

John is a solicitor with over 25 years of experience in private practice, in-house, and as a barrister. In 2004, he became the CEO and Executive Director of the Australian Pro Bono Centre. He has a Masters of Laws from UNSW and is a Visiting Fellow, teaching postgraduate Communications and Media law.

Sarah Morton-Ramwell

Partner, Ashurst – Sydney

Sarah is a partner and the Global Head of Pro Bono and Corporate Responsibility at Ashurst, where she advises leading non-profits and charities and assists in global pro bono development. She has a background in human rights, assisted in the creation of the UK Collaborative Plan for Pro Bono, and was a founding member and fellow of the UK Institute of Corporate Responsibility & Sustainability. Sarah sits on the International Bar Association's Pro Bono Committee. She was named Qantas Australian Woman of the Year in 2014 and in the 100 Women of Influence in 2016.