

Exploring Pro Bono Support and the Community Legal Sector: Is There More We Can Do?

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Abstract

Community legal centres (CLCs) are not-for-profit organisations providing free legal advice and services to people experiencing vulnerability and disadvantage. The work of the community legal sector is critical to ensuring positive social outcomes for people in our communities, as unresolved legal issues rarely occur alone, and often cause significant social, health and financial problems (People, 2014). CLCs often receive pro bono support from private law firms to assist with advice and legal work for their clients. However, some forms of pro bono support are provided much more commonly than others, such as legal advice. Many law firms, then, that do not have expertise in matters commonly dealt with by CLCs think they have a negligible contribution to make. This is not the case. This project is exploring what is possible for non-traditional pro bono support in WA. This may include locum supervision, provision of venues for meetings or support in designing publications such as annual reports. The key outcome for this project is to influence pro bono support in WA, particularly non-traditional pro bono support. However the outcomes will be useful for a firm considering its own contribution to the sustainability of important community services which support vulnerable and disadvantaged communities right across the state.

1. Introduction

Community legal centres are independent, not-for-profit organisations providing free legal advice and services to people experiencing vulnerability and disadvantage. They exist across Australia, with twenty-eight centres in Western Australia. The community legal sector has faced a number of changes recently which have challenged their sustainability in an increasingly difficult fiscal climate. These include an increasing demand for community legal services (Productivity Commission, 2014; NACLCLC, 2017); funding cuts which have occurred in the past two years and uncertainty around future funding under the National Partnership Agreement on Legal Assistance Services (NPA). Community legal centres faced a 30% cut in their funding through the NPA, which was to come into effect from 1 July 2017. Centres have now received 12 month extensions to existing funding agreements, and as such, the uncertainty has not completely disappeared.

This uncertainty coupled with a challenging funding environment for community services more broadly, has led the Community Legal Centres Association (WA) (the Association) as the peak body for the community legal sector in WA to explore other ways to support CLCs

to continue to play the critical role they play in their communities. Whilst the Association believes that the CLC sector should receive sustained, and additional, government funding, it is also committed to diversifying support (financial and otherwise), into the sector. The focus of this project is to map the ways in which law firms can collaborate with the sector to provide assistance to community legal centres in ways that are not traditional. For the purposes of this paper, traditional pro bono is used to broadly refer to clinical legal assistance, whether for clients and for the CLC.

1.1 What is pro bono?

‘Pro bono’ refers to work undertaken without charge. It translates from the Latin phrase ‘pro bono publico’ meaning ‘for the public good’. ‘Pro bono’ is often used to refer to legal work by law firms for disadvantaged clients, though it is important to note that lawyers are not the only professionals to provide free advice for people in need. The private legal profession does have a long tradition of providing legal services free of charge, and so often pro-bono support is described in these limited terms of providing particular kinds of legal advice and services.

The issue with defining pro bono support so narrowly, purely in terms of legal support, is that many law firms and lawyers who do not have the expertise in the common matters dealt with by CLCs, for example, family law, tenancy or financial matters, see that they have a negligible contribution to make. However, this is certainly not the case.

2. Process

The key outcome for this project is in exploring the nature of non-traditional pro bono support and what may be possible in WA. However, as a result of undertaking this exploration, the Association hopes that there will be assistance to those community legal centres who do not currently have pro bono relationships to develop them, and a building of capacity of lawyers and other staff working in community legal centres through, for example, law firms providing access to training and other professional development opportunities and access to their networks of barristers and other corporate clients who can provide assistance.

This project will document the range of ways in which pro bono services are currently being provided, as well as exploring the potential of new initiatives. It is anticipated that this will not only be of benefit to the community legal sector, but more broadly.

The way in which the project will reach these anticipated outcomes will be in researching the following questions:

- What is pro bono support, and what are the normal structures for it (internationally, nationally)? What’s the state in WA?
- How often is non-traditional legal support provided? What’s the state in WA?
 - This, critically, includes an exploration of non-legal pro bono support.
- Is there a relationship between pro bono support and sustainability of community legal services?
- What lessons can we learn from other sectors? (i.e. engineering, accounting/finance)
- Drawing it altogether - what’s possible in WA?

The questions will be answered by adopting an ‘extended case method’ approach (Babbie, 2014). This approach looks first to theory and data to determine the potential forms of pro

bono assistance that might be provided by law firms, before collecting additional data from law firms and community organisations in order to test whether the initial determination and theory needs to be changed.

As such, the first stage of the project consists of desktop research on pro bono support offered by law firms to the community legal sector nationally and internationally, and here in WA, including the reasons for providing those types of support and any limits on those types of support. The extended case method will then use a qualitative field research approach through small group discussions with CLCs and law firms about current and potential future pro bono support. Such research is particularly suited to the collection of data that can be used to build or modify a theory and its potential flexibility is also a key benefit for the exploratory research of this project (Babbie, 2014). This methodology also enables a participatory model of research that respects and integrates community legal sector and law firm perspectives into the research process.

3. Discussion

It is important to note that whilst the desktop research for this project has been completed, the qualitative field research through interviews and small group discussions is only part-way through. The key themes of the research to date are discussed here under the major questions to be addressed in the research.

3.1 What are normal structures for pro bono support?

The Australian Pro Bono Centre (APBC) is widely acknowledged within the legal sector as being the authority on pro bono legal services. They have a specific definition for pro bono support which is adopted widely, and includes legal services to clients, to centres, policy and advocacy work and community legal education (APBC, 2013).

Each year the national peak body, the National Association of Community Legal Centres (NACLC) conducts a census of member centres to map trends and changes in the CLC sector and its clients. Pro bono partnerships is one of the factors examined. Of the 122 centres that answered this question, 63.1% (77 CLCs) reported that their CLC had a pro bono partnership with a business in place (NACLC, 2017). This demonstrates how important pro bono relationships are to the sector, given that a majority of Centres have them in place.

In terms of what kind of support these partnerships consist of, NACLC have mapped the number of hours spent by pro bono lawyers to particular activities. For 77.1% of responding CLCs, the pro bono activity included involvement in direct service delivery (i.e. delivering legal services to clients). This form of pro bono is so significant that 79.9% of the total hours provided by firms through pro bono to the sector was dedicated to this particular activity (NACLC, 2017, p.25). The next most popular answer was the provision of advice or assistance to the centre itself (usually in the form of governance, employment, or contract advice), with 74.3% of centres receiving this activity pro bono. However, the total number of hours spent on this activity by firms providing pro bono support was only 4.8% (NACLC, 2017, p.25). This means that whilst the number of centres receiving that support is significant, it is not as significant in terms of the quantum of support actually provided.

The structure that pro bono support takes is varied. For example, the APBC provides advice and case studies on models of case referral, clinics, outreach, secondments, fellowships, co-

counselling, secondary consultations, technology-based services, community legal education and law reform and policy work (APBC, 2013).

3.1.1 Issues with definition

It is important to note that some of the literature which discusses pro bono support doesn't clearly differentiate between situations where CLCs are using lawyers or law students volunteering their time, and where they are receiving legal assistance through a pro bono relationship with a firm. The distinction is important to make, and the APBC is clear about excluding lawyers or law students volunteering their time from their definition of pro bono. Lawyers that support CLCs under a pro bono partnership firm are still personally being paid for their time by their firm; whereas volunteer lawyers are not. The distinction also has ramifications for which entity is holding legal practice insurance as the Legal Practice Board has a specific category for lawyers only providing pro bono assistance, however this would focus on volunteer lawyers.

Some also refer to non-legal pro bono support as simply 'sponsorship'. However, that is also not a universally recognised and understood definition, and Maguire et al, and Munro, argue for definitional change, to include a wider definition of pro bono. The final paper will explore some of these definitional issues, but this project will focus more on the outcomes as outlined in 2. above.

3.2 How is non-traditional support provided?

The literature with respect to how non-legal support (as an example of non-traditional support) is provided is limited. Considering the list of activities in the NALC Census Report, there are five that are non-legal in nature. They are accounting/book-keeping; administrative support; governance/management; publications (e.g. design and printing); marketing and fundraising/sponsorship. Combined, these activities took up 2.57% of the total hours provided by pro bono partners to the sector, with no firm providing accounting/book-keeping support. Plainly, there is a real opportunity to expand this kind of pro bono support provided to the sector.

Other activities of non-legal pro bono support that have been identified as possibly useful from research and from CLCs themselves include:

- Training/mentoring (including providing professional development opportunities);
- IT support and expertise;
- Donated law reports;
- Access to the clients of private law firms, who may also be able to support CLCs in some way;
- Access to law firm libraries, and to archive space;
- Providing office space on an ongoing or temporary basis;
- Provision of venues and catering for meetings, workshops or conferences;
- Providing interpreters and/or auditors;
- Preparing submissions (for example, on matters of law reform)

The structures of these forms of support could be a secondment – providing administrative or managerial staff on an ongoing/temporary basis to a CLC. It could be through providing the

support in-house and then giving it to the CLC (in the case of publications); or it could be through a direct or indirect financial contribution (directly providing funds for that purpose or allowing the CLC to use the firm's account with a service supplier/provider). The APBC outlines a case study of the Employment Law Centre of WA (ELC), where ELC receives a number of the elements above as part of arrangements it has with a number of firms (APBC, 2013, Chpt 30). The structure in which it is provided is mixed. The legal pro bono support is provided largely through secondments; whereas the non-legal pro bono support has often been completed in house and then provided to ELC.

3.3 Is there a relationship between pro bono support and sustainability of community legal services?

This question is not critical to the rest of the paper, however it has come up as a question of some importance to the sector within small group discussions and so has been included. The question is whether there is a different way of considering the system of community legal services that would more effectively utilise resources to ensure that services are sustained for those that need it. For example, is it a good use of the limited time and resources of CLCs to develop wills? Is this a service that can be 'pushed' to private legal firms, given their expertise and experience in this area, in order to free up the time of CLCs to work on other matters? This element of this question is not really addressed in the literature, and the information required to address it will come from the field research.

3.4 What lessons can we learn from other sectors?

For the purposes of this paper, the focus is on the provision of pro bono support in the engineering sector. Engineering without Borders seems to be recognised as the major pro bono engineering body (insofar as one exists). They have recently established an initiative called EWB Connect, which 'aims to facilitate a mindset shift and capability lift in the infrastructure profession towards greater social value creation and a culture of pro bono engineering' (EWB Connect, n.d.). In explaining their purpose and existence, EWB Connect frequently refers to the legal profession to describe the concept of pro bono. It seems, in fact, that the engineering profession is learning from the legal profession about how to think about and action the concept of pro bono.

The structure of EWB Connect is similar in nature to WA's Law Access in that it forms a kind of 'clearing-house' for pro bono work. Organisations in need approach EWB Connect, which then posts structured project briefs online. Firms interested in undertaking the work pro bono then apply via EWB Connect. Law Access operates slightly differently, due to the different nature of the information and client, and seeks out lawyers for the legal support provided. The Community Legal Centres Association Queensland (CLCQ) have piloted an approach to non-legal pro bono support that is similar to the EWB structure (that is, asking firms for particular support as it arises) but it is too early to make comment about whether this has been successful in practice (R. Munro 2017, pers comm., 10 Aug).

4. Conclusions

As previously stated, the research for this project is ongoing. The perspective of the Association going into this project was that pro bono is an important component of the community legal sector (in terms of both the sector itself but also for the law firms involved);

however the contribution could be enhanced through a broader understanding of the range of pro bono support that can be provided and increasing the number of law firms in Perth with a formal pro bono programme in place. The research to date has found that this perception is accurate, and there are some considerable opportunities through which non-traditional pro bono support can be utilised within the sector.

From here, the qualitative field research through interviews and small group discussions will be finalised and incorporated into the key themes and trends. The paper will be distributed and it is at this point when the real work will begin. One of the key purposes of undertaking this project for the Association was to facilitate new forms of pro bono connection between CLCs and firms. The intention will be to use this research and some of the connections made through the development of this research, to facilitate that to occur.

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