

VICTORIAN BAR PRO BONO AWARDS

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The Victorian Bar's contribution to the administration of civil and criminal justice through pro bono work is well known.

It is fitting to acknowledge this generally, and more specifically through the various awards to be announced tonight. The expression "*pro bono*" is the familiar abbreviation for the Latin "*pro bono publico*": "for the public good". For a long time the expression has been used to describe free legal work done by legal professionals for individuals and organisations (such as charities) not able to pay for legal services.

Familiar as the expression *pro bono* is, public celebration of *pro bono* work like that which we undertake tonight is still relatively novel. It has much to recommend it — to encourage others as much as to recognise the achievements over the past year.

In a book of great perspicacity entitled *The Rise of Professional Society: England Since 1880*, Harold Perkin, the British social historian, described the rise of the modern professions of law and medicine in the late 19th century. He explained that donating legal

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and medical services to those who could not afford them was an accepted part of professional identity in the early 20th century. *Pro bono* work was seen as a *quid pro quo* for the status and levels of remuneration which accompanied professional practice in the community.

Such *pro bono* assistance as was given was provided on an *ad hoc* basis: that is, organised and provided entirely by persons in the private sector of the economy. As matters developed, the basis on which such assistance was provided was well understood at the Victorian Bar. As the Bar grew in the 1950s after World War II, members gave *pro bono* assistance to those in need, particularly in common law and criminal matters.

In the early 1970s, as Australia was absorbing the ideological implications of European welfare state models, and copying developments in the United Kingdom, financial assistance for those in need of legal services was formally organised under relevant legislation and government budgets provided funds for both civil and criminal legal aid. This was the historical point at which the public sector became involved and an official bureaucracy was instituted for what is now referred to as Legal Aid. Hopes were high for this rearrangement. One effect, however, was that *ad hoc pro bono* work organised directly and unofficially by the profession seemed far less pressing and, I think it is fair to say, the level of *pro bono* work dropped away somewhat.

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Just over two decades later, in the early 1990s, there was a severe crisis in legal aid funding not unlike the current crisis. In the previous 22 years of government intervention, demand for legal aid rose enormously. The increase in legal aid outstripped inflation, and legal aid was seen as one of the fastest growing items of government expenditure. Government enthusiasm for delivering legal aid in civil matters declined sharply.

In the period 1989 to 1994, partly as a reaction to these events, there were numerous enquiries into the legal profession, both overseas and here. One of the main themes of these enquiries was access to justice, and one of the most hotly contested issues was whether the administration of justice required more funding or whether greater efficiencies could be identified and maintained without increasing funding. Something of a battle ensued between those, on behalf of governments, who were stretched to allocate scarce resources and some in the profession who resisted change.

In the United Kingdom in 1989, Lord Bingham of Cornhill infuriated some of his colleagues by remarking that the greatest threat to the Bar was not Lord Mackay of Clashfern's groundbreaking Green Paper recommending civil justice reforms, but "the Bar's reaction to it".

In Australia in 1994, the Access to Justice Report identified three objectives to improve the justice system: (1) equality of

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access to legal services; (2) national equity; and (3) equality before the law.

Progress was made relatively quickly with the first — equality of access to legal services — despite cuts made at the same time in the provision of government funding for legal aid. One of the enduring aspects of the progress made is the Victorian Bar's very healthy and very impressive Pro Bono Scheme. At the time of which I speak, 1994, the Victorian Bar was the first Australian Bar which tried to address the crisis in legal aid funding. A predecessor of the present Attorney-General, the Honourable Jan Wade, provided much-needed seed capital to the Victorian Bar and the Law Institute of Victoria. The two organisations set about cooperatively to reorganise and to revitalise *pro bono* work. At the forefront were two silks who were very experienced in common law, John Barnard QC and the late Peter Galbally QC. One idea floating around at the time came from the United States. That idea was that *pro bono* work might represent so many hours per year of a practitioner's time or perhaps a percentage of a practitioner's income. Figures between 5 and 10 per cent of income were mentioned and certainly the figures showed that, if the idea was embraced enthusiastically by a significant proportion of the Bar and the solicitors' branch of the legal profession, the difference this would make to civil legal aid was very significant. It is not desirable for *pro bono* work at the Bar to fall on the shoulders of a few.

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Pro bono work at the Victorian Bar had existed and then dropped away, as I have explained, as the private and public sectors wrestled with different and competing paradigms of service delivery. The watershed of 1994, when the Bar's *pro bono* efforts were reinstated, demonstrated that each of the private and public sectors in the economy has a role — neither alone could meet the community's demands for legal assistance. That remains the contemporary reality.

There is a very good reason for mentioning tonight something of the history of the provision of *pro bono* services by the Victorian Bar. That is to make sure we do not fall too easily into reflexive self-congratulation. Members of the Victorian Bar rose to the challenge in different socio-economic times and those who follow you will, I am sure, do the same, especially as financial pressures have now spread beyond civil work and into the criminal justice system. To appreciate that *pro bono* work should have a place in your professional life is to be part of one of the continuities of the Victorian Bar, of which we are entitled to be proud.

The taking of local responsibility for providing legal services to those who could not afford them proved so successful that eventually the more organised delivery of the Bar's *pro bono* services was transferred to PILCH, which had the relevant office infrastructure to do what had been done on a voluntary basis at the Victorian Bar from 1994 until that transfer. Other Bars around

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Australia followed the Victorian Bar's lead in revitalising *pro bono* services, but it appears that the Victorian Bar and the solicitors of Victoria, in a relative sense, remain leaders today in terms of the volume and value of *pro bono* work undertaken. And it is a particular pleasure to note that readers and junior counsel are encouraged to make a contribution.

The sonnet inscribed on the bottom of the Statue of Liberty was written by a woman named Emma Lazarus and includes the famous words: "Give me your tired, your poor, [y]our huddled masses yearning to breathe free". What the Statue of Liberty holds high in one hand is Liberty's torch, to show that freedom enlightens the world. In her other hand is a tablet representing the law. Freedom and the law go together. One aspect of true freedom is the aspiration to have equality of access to legal services. Those present tonight are part of the collective effort to realise that aspiration.

Let me conclude with the remark that all contributions to the *pro bono* work of the Bar are valuable in manifold ways. It is right to encourage individual contributions with awards. And right to use the occasion collectively to celebrate what barristers, as a group, can do for the public good by acting free of charge to promote justice, which is a foundation of social harmony.