

The profession giving back to the community¹

By Penny Thew² | 17 March 2020



Amid the necessary discussions about preserving the relevance of the Bar,³ it is timely to recall all that the profession contributes to the community. It is timely in particular to consider what would be lost should the Bar, so central to the rule of law, ever diminish.

As has recently been observed, the relevance of the Bar 'will depend largely upon society's perception of it and what it stands for', and that it is the special characteristics of barristers, such as a 'strong sense of public duty', that must be maintained if the Bar is to remain relevant.⁴

That strong sense of public duty sees the Bar and the legal profession generally contribute to the wider community in ways that often go unnoticed and, while quantifiable in certain respects, have broad positive implications for access to justice that are not so immediately identifiable.

In the 2018-2019 annual report of the Australian Pro Bono Centre, the Chair said that he 'would conservatively estimate the value (or opportunity cost) of [the] pro bono legal services [provided] last financial year at \$140 million', saying that this represents 'a huge contribution to access to justice and the public good'.⁵

In the New South Wales Bar Association Annual Report 2018-2019,⁶ it was reported that, since the inception of the Legal Assistance Referral Scheme 25 years ago in April 1994, the scheme had processed over 6,350 applications in total and that in the 2018-2019 year alone, 500 enquiries about legal assistance and related matters had been received. During the 2018-2019 period, barristers had contributed approximately 1,350 hours of work through the scheme and approximately 58,700 hours of work in total since its commencement in 1994.⁷

In addition to this, barristers also contributed approximately 600 hours of work through the court-appointed Federal Court Pro Bono Scheme and contributed further hours of work through the duty barrister scheme operating on a daily basis at the Downing Centre Local Court and John Maddison Tower.

In 2017, then President of the Law Council of Australia, Fiona McLeod SC, said that a 'staggering' 2.86 million free hours had been provided by lawyers to the community in the ten years since 2007,⁸ observing that 'contributions of such scale were unique to the legal profession.'⁹

It has further been found that the legal profession in effect steps in to fill the gap when there is a 'lack of funding for one area of the justice system', given such a lack of funding simply 'results in cost-shifting to other areas', including the Australian pro bono sector¹⁰ which provides 'hundreds of thousands of pro bono work hours every year to those who have no other options and cannot afford to pay for legal services'.¹¹ That it is the private legal profession that meets the need when there is a lack of funding for an area of the justice system was a theme of the opening address given by then President of the Law Council of Australia, Arthur Moses SC, at the National Access to Justice and Pro Bono Conference in 2019, albeit with the central message being that it ought not be expected to replace government funded assistance.¹² Such findings are not new and are not exclusive to Australia.¹³

It is a pivotal role that the Bar and wider legal community play in promoting access to justice, which is 'intertwined with the rule of law, and as such, underpins democratic society and social cohesiveness'.

A repeated observation of the Law Council of Australia's August 2018 *Justice Project* report was that the private legal profession plays a critical part in ensuring access to justice, including through its substantial pro bono contribution,¹⁴ which is of 'great value to the community, and is a celebrated aspect of Australia's legal culture.'¹⁵ It is to be remembered as well that the junior Bar in particular is well positioned to provide cost-effective, responsive advice and representation to those in the community with limited financial means. It is also to be remembered that the ability to give back to the community in these ways requires a strong, successful Bar.

It is a pivotal role that the Bar and wider legal community play in promoting access to justice, which is 'intertwined with the rule of law, and as such, underpins democratic society and social cohesiveness'.¹⁶ It is these significant contributions to the community, the loss of which would be great indeed, that can be recalled and acclaimed in the context of responding to challenges impacting the Bar and its relevance. In promoting the Bar, it is important to have regard to these significant contributions, just as it can be of importance to bear them in mind in the context of discussions about the preservation of the relevance of the Bar. **BN**

ENDNOTES

- 1 This article was prepared for publication in an earlier edition of *Bar News*, originally under the title 'Not everything that counts can be counted' (The Honourable JJ Spigelman AC, 'Citizens, Consumers and Courts', address at the International Conference on Regulation Reform Management and Scrutiny of Legislation, 9 July 2001, p3 of 4).
- 2 The author would like to thank Richard Cheney SC and Anthony Cheshire SC for their comments, insights and feedback on this article.
- 3 See for instance the Honourable Susan Kiefel AC, Chief Justice of Australia, 'The Australian Bar – Change and Future Relevance' [2019] (Winter) *Bar News* 25; the Honourable TF Bathurst, Chief Justice of New South Wales, 'The role of the commercial bar in the mid-21st century' [2019] (Winter) *Bar News* 28; Anthony Cheshire SC, 'The Bar needs to fight for its future' [2019] (Summer) *Bar News* 6.
- 4 The Honourable Susan Kiefel AC, Chief Justice of Australia, 'The Australian Bar – Change and Future Relevance' [2019] (Winter) *Bar News* 25 at 27.
- 5 https://www.probonocentre.org.au/wp-content/uploads/2019/11/2019.11.04_Annual-Report-FINAL.pdf, p7.
- 6 NSW Bar Association Annual Report 2018-2019, p49.
- 7 NSW Bar Association Annual Report 2018-2019, p49.
- 8 <https://www.lawcouncil.asn.au/media/media-releases/2-86-million-pro-bono-hours-australian-legal-professions-unique-contribution-to-the-nation>.
- 9 <https://www.lawyersweekly.com.au/biglaw/22010-lca-calls-for-funding-to-support-lawyers-staggering-pro-bono-efforts>
- 10 Law Council of Australia, *The Justice Project: Final Report – Overarching Themes*, August 2018, p10.
- 11 *Ibid*, Pt2, p13.
- 12 Arthur Moses SC, *The hard-fought arc to justice: Opening Address to the National Access to Justice and Pro Bono Conference*, 14 March 2019, p7.
- 13 Regan, E, 'How and why is pro bono flourishing?' in Arup, C and Laster, K, *For the Public Good: Pro Bono and the Legal Profession in Australia*, The Federal Press, 2001, p151.
- 14 Law Council of Australia, *The Justice Project: Final Report – Overview*, August 2018, p38; Pt2, p4; Pt2, p11.
- 15 *Ibid*, Pt2, p13.
- 16 *Ibid*, *Overarching Themes*, p64; see also generally The Honourable Susan Kiefel AC, Chief Justice of Australia, 'The Australian Bar – Change and Future Relevance' [2019] (Winter) *Bar News* 25 at 27.